

ASIC CLASS ORDER [CO 13/632]

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 13/632] under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

1. Background

The *Corporations Amendment Regulations 2010 (No 5)* established a new shorter Product Disclosure Statement (PDS) regime under Subdivision 4.2B (for superannuation products) and Subdivision 4.2C (for simple managed investment schemes) of Division 4 of Part 7.9 of the *Corporations Regulations 2001*. The shorter PDS regime fully commenced on 22 June 2012.

ASIC Class Order [CO 12/749] *Relief from the Shorter PDS regime* provides interim relief, until 22 June 2014, excluding hedge funds from the shorter PDS regime. However, hedge funds who have prepared and given a shorter PDS prior to 22 June 2012 may continue to use their shorter PDS until 22 June 2013, after which they must prepare a full PDS.

2. Purpose of the class order

In September 2012, ASIC released Regulatory Guide 240 *Hedge funds: Improving disclosure* (RG 240). RG 240 contains new disclosure benchmarks and principles for issuers of hedge funds. The benchmarks and disclosure principles in this guide set out the specific features and risks of hedge funds that ASIC expects to be addressed in a PDS for these products.

ASIC is currently reviewing the definition of "hedge fund" which we consider should disclose against the benchmarks and principles in RG 240. We expect to complete this review so that RG 240 will commence from 1 February 2014.

Currently, Class Order [CO 12/749] provides responsible entities of hedge funds which had prepared and given a shorter PDS prior to the commencement of the class order with a transitional period to allow them to continue using a shorter PDS until 22 June 2013.

Class Order [CO 13/632] extends this transitional period until 1 February 2014 to align with the proposed commencement of RG 240. After that date, hedge funds will need to prepare and give a full PDS that complies with RG 240.

3. Operation of the class order

The class order extends the transitional period provided to responsible entities of hedge funds that had prepared and given a shorter PDS prior to 22 June 2012 from 22 June 2013 to 1 February 2014.

4. Consultation

ASIC has consulted with the Financial Services Council.

Statement of Compatibility with Human Rights

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

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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.

Overview of the legislative instrument

The purpose of this legislative instrument is to amend ASIC Class Order [CO 12/749] (the principal class order). The principal class order provides responsible entities of hedge funds which had prepared and given a shorter PDS prior to the commencement of the class order with a transitional period to allow them to continue using a shorter PDS until 22 June 2013.

ASIC is currently reviewing the definition of "hedge fund" which we consider should disclose against the benchmarks and principles in RG 240. We expect to complete this review so that RG 240 will commence from 1 February 2014.

This legislative instrument extends the transitional period until 1 February 2014 to align with the proposed commencement of RG 240.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.