

ASIC CLASS ORDER [CO 13/524]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 673(1)(a) of the *Corporations Act 2001* (the *Act*).

Paragraph 673(1)(a) provides that ASIC may exempt a class of persons from a provision of Chapter 6C of the Act.

1. Background

Part 6C.1 of the Act imposes an obligation on a person to disclose details of their substantial holdings in listed entities. The Part is designed to ensure that investors have access to information about the identity, interests and dealings of persons who may be in a position to influence or control a listed entity.

The information required under Part 6C.1 must be set out in a substantial holding notice that is in the form prescribed in Schedule 2 to the *Corporations Regulations 2001* (*Regulations*) (Forms 603, 604 and 605) and must include the details set out in those Forms: see subsection 671B(4) of the Act and regulation 1.0.03, Schedules 1 and 2 to the Regulations.

A substantial holding notice must also be accompanied by documents, in writing and readily available, setting out the terms of any relevant agreement contributing to the situation giving rise to the need for substantial holding disclosure.

Throughout a takeover bid, a bidder will generally acquire relevant interests in securities in respect of which the holders accept the bid and as such, will be required to provide substantial holding notices in the prescribed form disclosing details, and attaching relevant documentation, in relation to the acceptances.

2. Purpose of the class order

The purpose of the class order is to remove the requirement for a bidder under a regulated takeover bid to disclose two kinds of interrelated matters in a substantial holding notice where the disclosure is not required to achieve the regulatory purpose underlying the disclosure requirement.

First, without relief, a bidder would be required to give copies of the bidder's statement, offer document and acceptance forms with substantial holding notices detailing acquisitions under the bid. This obligation is considered to be disproportionately burdensome because the bidder is required to lodge the bidder's statement and offer document with ASIC and send it to the

relevant market operator for release to the market. In other words, the substantive documents that would be required to accompany the substantial holding notice are publicly available.

Second, without relief, a bidder would also be required under the relevant prescribed forms (Forms 603 and 604) to identify the name and address of every person who has accepted an offer under the takeover bid and who, at the time the substantial holding notice is given, remains a registered holder of the securities. This will commonly be the case for persons who accept the offers under the bid because securities which they hold will not generally be transferred to the bidder before the substantial holding notice must be given by the bidder.

This class order, with respect to the first limb of the relief, replaces ASIC Class Order [CO 04/1413]. The *Legislative Instruments Act 2003* (the *LIA*) provides for the periodic expiry of legislative instruments ('sunsetting') to ensure that they are kept up to date and only remain in force for so long as they are needed. Class Order [CO 04/1413] (which is a legislative instrument) was scheduled to eventually expire under the LIA's sunsetting provisions and has been revoked by Class Order [CO 13/518]. ASIC's reissuing of the relief underlying the class order has provided an opportunity to deal with its eventual expiry.

3. Operation of the class order

The class order provides relief to a bidder under a takeover bid so that a bidder:

- (a) does not need to give copies of the bidder's statement, offer document and acceptance forms with a substantial holding notice for acquisitions under the bid; and
- (b) does not need to specify in the substantial holding notice the name and address of a person who has accepted an offer under the takeover bid and who, at the time the substantial holding notice is given, remains a registered holder of the securities.

The removal of the requirement to specify in the substantial holding notice the name and address of a person who has accepted an offer under the takeover bid and who remains a holder, only applies to the extent the person would not otherwise need to be identified in the notice. For example, a bidder would need to specify in the substantial holding notice a person who is a counterparty to an agreement with the bidder that is unconnected with the bid and which gives the bidder a relevant interest in securities, even though that person has accepted an offer under the takeover bid.

A bidder that does not specify in the substantial holding notice the name and address of a person who has accepted an offer under the takeover bid and who, at the time the substantial holding notice is given, remains a registered holder of the securities, must provide the information to the target if the target requests the information in writing. The request must be complied with no later than the next business day after receiving the request. This condition of the exemption ensures the target is still able to promptly obtain this information if the bidder omits it from the substantial holding notice in reliance on this class order.

4. Consultation

On 14 November 2012 ASIC released Consultation Paper 193: *Takeovers, compulsory acquisition and substantial holdings: Update of ASIC guidance (CP 193)* seeking feedback on proposals to update and consolidate a number of regulatory guides relating to Chapters 6–6C of the Act. CP 193 also sought feedback on proposals to reissue the class orders (including Class Order [CO 04/1413]) associated with ASIC’s updated guidance and to make new class orders addressing some discrete policy issues.

The consultation period closed on 22 February 2013. ASIC received 7 submissions in response to CP 193. Details of the submissions received are contained in REP 350 *Response to submissions on CP 193 Takeovers, compulsory acquisitions and substantial holdings* which is available on the ASIC website at www.asic.gov.au.

Notwithstanding ASIC’s general consultation on the re-issue and update of its takeovers class orders, the relief implemented by Class Order [CO 13/524] is of a minor and machinery nature and does not substantially alter existing arrangements.

Statement of Compatibility with Human Rights

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

ASIC Class Order [CO 13/524]

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

Part 6C.1 of the *Corporations Act 2001* imposes an obligation on a person to disclose details of their substantial holdings in listed entities. The Part is designed to ensure that investors have access to information about the identity, interests and dealings of persons who may be in a position to influence or control a listed entity.

The operation of Part 6C.1 of the Act in the context of a regulated takeover bid may require a bidder with a substantial holding in a listed target to include information in a substantial holding notice that is publicly available or whose inclusion in such a notice is not required to achieve the regulatory purpose underlying the disclosure requirement.

The class order provides relief to a bidder under a takeover bid so that a bidder:

- (a) does not need to give copies of the bidder's statement, offer document and acceptance forms with a substantial holding notice for acquisitions under the bid; and
- (b) does not need to specify in the substantial holding notice the name and address of a person who has accepted an offer under the takeover bid and who, at the time the substantial holding notice is given, remains a registered holder of the securities.

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.