

ASIC CLASS ORDER [CO 13/518]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes Class Order [CO 13/518] under subsections 350(1), 601QA(1), 655A(1), 669(1), 673(1), 741(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*).

This class order, which is an omnibus revocation instrument, revokes a number of other class orders made by ASIC. A number of sources of power were used to make those class orders. As this class order is revoking those class orders, the powers being exercised in this class order are the multiple sources of power used to make those other class orders.

1. Background

The takeover provisions in Chapters 6-6C of the Act were substantially rewritten by the *Corporate Law Economic Reform Program Act 1999* (the *CLERP Act*). Since the implementation of the CLERP Act, we have made a number of exemptions from, and modifications to, the takeover provisions by class order with a view to:

- (a) improving the operation of the provisions in light of developments and innovations observed in the market over time; and
- (b) addressing technical issues and anomalies identified in the course of ASIC's administration of the provisions.

ASIC has recently reviewed the takeovers related class orders and has identified the exemptions and modifications which continue to be required. As part of ASIC's review process, ASIC has decided to re-issue those class orders which ASIC has identified as still being required (generally in a similar, and where appropriate, updated form).

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. A number of the takeovers related class orders are scheduled to eventually expire under the sunset provisions of the LIA. ASIC's reissuing of the class orders has given ASIC the opportunity to deal with their eventual expiry.

2. Purpose of the class order

The purpose of Class Order [CO 13/ 518] is to revoke, in a single instrument, a number of takeovers-related class orders made by ASIC.

3. Operation of the class order

Class Order [CO 13/518] revokes the class orders listed in column 1 of the table below.

A description of the general subject matter of the revoked class orders is listed in column 2.

The revoked class orders have been reissued by being replaced by, or consolidated into, the new class orders listed in column 3.

Column 1	Column 2	Column 3
Revoked ASIC class order	General subject matter of revoked class orders	Reissued ASIC class order
Class Order [CO 00/193]	The revoked class order allowed a statement by an official person or a published author to be included in a disclosure document without the person's consent.	Class Order [CO 13/523]
Class Order [CO 00/343]	The revoked class order allowed a bidder under a takeover bid to offer cash instead of an unmarketable parcel of securities as consideration under a takeover bid without the need to appoint a nominee.	Class Order [CO 13/521]
Class Order [CO 00/344]	The revoked class order allowed a bidder, who lodges a supplementary bidder's statement with ASIC before dispatching its original bidder's statement, to dispatch a replacement bidder's statement that incorporates all of the changes in the supplementary statement, to target holders.	Class Order [CO 13/528]
Class Order [CO 01/1541]	The revoked class order clarified that members of a listed schemes may change the responsible entity by ordinary resolution.	Class Order [CO 13/519]
Class Order [CO 01/1542]	The revoked class order modified some of the provisions dealing with relevant interests, voting	Class Order [CO 13/520]

	power and certain exceptions to the prohibition on acquiring relevant interests.	
Class Order [CO 01/1543]	The revoked class order modified the takeover bid provisions related to formulating the offer under the bid, information not available at lodgment of the bidder's statement with ASIC, the content of a bidder's statement, aspects of a target's statement and varying offers under a bid.	Class Order [CO 13/521]
Class Order [CO 01/1544]	The revoked class order modified the compulsory acquisition thresholds to exclude securities in which a bidder or their associate has a relevant interest, and convertible securities that are exercised.	Class Order [CO 13/522]
Class Order [CO 01/1599]	The revoked class order modified the relevant interest provisions so that a derivatives broker does not have a relevant interest in relation to a security merely because the broker received specific instructions from a client directing it to enter into a sold position in relation to that security.	Class Order [CO 13/520]
Class Order [CO 02/924]	The revoked class order provided that a person does not have a relevant interest in the underlying securities merely because they have a right under a call warrant to acquire the securities or to require securities to be kept in trust.	Class Order [CO 13/526]
Class Order [CO 02/925]	The revoked class order provided that the issuer of a call warrant does not have a	Class Order [CO 13/526]

	<p>relevant interest in securities underlying the warrant where the issuer has no power to control voting or disposal except if the warrant expires or the holder defaults. The revoked class order also varied the associate concept so that no association arises between the warrant issuer and the holder merely because of the warrant.</p>	
Class Order [CO 02/926]	<p>The revoked class order provided that the put warrant issuer does not have a relevant interest in the underlying securities in certain circumstances.</p>	Class Order [CO 13/526]
Class Order [CO 02/927]	<p>The revoked class order provided that a warrant trustee does not have a relevant interest in securities in trust under the warrant merely because it has certain discretions.</p>	Class Order [CO 13/526]
Class Order [CO 03/633]	<p>The revoked class order exempted a bidder from the sign-off requirements where a notice varying the terms of an off-market bid is approved in a manner that is consistent with any of the ways a bidder's statement can be approved.</p>	Class Order [CO 13/521]
Class Order [CO 03/634]	<p>The revoked class order provided that a listed company does not have a relevant interest in securities merely because it must apply restrictions on the disposal of the securities under a listing rule escrow. The class order also provided that the ASX does not have a relevant interest in relation to a listing rule escrow.</p>	Class Order [CO 13/520]

Class Order [CO 03/635]	The revoked class order allowed bidders and targets to include a statement by an official person or a published author in the bidder's statement or target's statement (as applicable) without the person's consent.	Class Order [CO 13/523]
Class Order [CO 03/636]	The revoked class order allowed the bidder to also compulsorily acquire the non-transferable employee securities.	Class Order [CO 13/522]
Class Order [CO 04/631]	The revoked class order modified the definition of 'associate' to make it clear that parties to an agreement will not be associates merely because the agreement gives a party the right to dispose of securities in the body or control the exercise of a power to dispose of the securities.	Class Order [CO 13/520]
Class Order [CO 04/653]	The revoked class order gave on-sale disclosure relief for certain incidental procedural aspects of 'scrip takeover bids' and 'scrip schemes of arrangement' that relate to persons with unmarketable parcels, foreign holders and other persons.	Class Order [CO 13/525]
Class Order [CO 04/1413]	The revoked class order exempts the bidder from having to give copies of the bidder's statement, offer document and acceptance forms with their substantial holding notice.	Class Order [CO 13/524]

The class order also varies ASIC Class Order [CO 00/2338]. The part being varied is an amending part which amended one of the principal class orders being revoked in the list above, namely ASIC Class Order [CO 00/344].

4. Consultation

On 14 November 2012, ASIC released Consultation Paper 193: *Takeovers, compulsory acquisitions and substantial holdings: Update to 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 referred to the expiry of class orders scheduled to eventually sunset under Part 6 of the LIA and disclosed ASIC's intention to reissue those class orders associated with ASIC's updated regulatory guidance. The consultation period closed on 22 February 2013. ASIC received 7 submissions in response to CP193. 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 ASIC's website at www.asic.gov.au.

Following the consultation, ASIC decided to proceed to reissue the class orders. Notwithstanding the consultation, ASIC considers that Class Order [CO 13/518] is of a minor or machinery nature and, having regard to the contemporaneous reissuing of the class orders, 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 13/518]

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

ASIC Class Order [CO 13/518] revokes the class orders listed below. In the revoked class orders, ASIC gave exemptions from, and modifications to, takeover related provisions in the *Corporations Act 2001* (primarily in Chapters 6 – 6C):

- (a) ASIC Class Order [00/193] (Experts: citing in disclosure documents);
- (b) ASIC Class Order [00/343] (Unmarketable parcels);
- (c) ASIC Class Order [00/344] (Changes to a bidders statement between lodgment and dispatch);
- (d) ASIC Class Order [01/1541] (Changing the responsible entity);
- (e) ASIC Class Order [01/1542] (Relevant interests, voting power and exceptions to the main takeover prohibition);
- (f) ASIC Class Order [01/1543] (Takeover bids);
- (g) ASIC Class Order [01/1544] (Compulsory acquisition following a takeover bid);
- (h) ASIC Class Order [01/1599] (Sydney Futures Exchange — participant’s relevant interest and voting power);
- (i) ASIC Class Order [02/924] (Call warrant holder takeovers relief);
- (j) ASIC Class Order [02/925] (Call warrant takeovers relief);
- (k) ASIC Class Order [02/926] (Put warrant takeovers relief);
- (l) ASIC Class Order [02/927] (Warrant trustee takeovers relief);
- (m) ASIC Class Order [03/633] (Takeovers: notice of variation);
- (n) ASIC Class Order [03/634] (Takeovers: listing rule escrow);
- (o) ASIC Class Order [03/635] (Takeovers: consent to quote officials and publications);
- (p) ASIC Class Order [03/636] (Takeovers: non-transferable employee securities);
- (q) ASIC Class Order [04/631] (Associates: right to dispose of securities);

- (r) ASIC Class Order [04/653] (On-sale disclosure relief for scrip bids and schemes of arrangement); and
- (s) ASIC Class Order [04/1413] (Bidder giving substantial holding notice).

The class order also varies ASIC Class Order [CO 00/2338]. The part being varied is an amending part which amended one of the principal class orders being revoked in the list above, namely ASIC Class Order [CO 00/344].

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.