

ASIC CLASS ORDER [CO 13/1026]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes Class Order [CO 13/1026] under paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*).

Paragraph 911A(2)(l) 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: *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 relevant regulator or regulators 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.

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, which took effect on 1 April 2013, these foreign financial services providers are now regulated in the UK by either:

- (a) the Financial Conduct Authority (the **FCA**); or
- (b) both the FCA and the Prudential Regulation Authority (the **PRA**).

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, without effecting any substantive change to the underlying policy in ASIC Regulatory Guide 176.

3. Operation of the class order

This amending class order amends the principal class order in the following ways.

The former definition of 'Part IV Permission' in the principal class order has been replaced with a new definition of 'Part 4A Permission'. A Part 4A Permission is defined as a permission given under Part 4A of the FSM Act or having effect as if so given under that Part. This definition covers Part IV

Permissions given by the former FSA that were grandfathered by transitional measures, as well as Part 4A Permissions given by the FCA or the PRA to bodies authorised for the first time on or after 1 April 2013.

A new definition of ‘PRA’ is inserted in the principal class order. ‘PRA’ is defined as the Prudential Regulation Authority of the United Kingdom. The PRA is the prudential regulator for deposit-takers (such as banks, building societies and credit unions), insurers and major investment firms. Under the FSM Act, a Part 4A Permission can be granted by either the FCA or the PRA on or after 1 April 2013.

There are bodies that are regulated by either the FCA, or by both FCA and the PRA. Bodies that are regulated by the FCA and the PRA are known as dual-regulated bodies. A new definition of a ‘dual-regulated body’ is inserted in the principal class order. A ‘dual-regulated body’ means a body whose regulated activities in the United Kingdom include a PRA-regulated activity within section 22A of the FSM Act.

A new definition of an ‘appropriate regulator’ is inserted in the principal class order. An ‘appropriate regulator’ is defined as both the PRA and the FCA (for a dual-regulated body) or the FCA (for a body that is not dual-regulated body).

The principal class order will require bodies to provide ASIC with certain written undertakings and covenants in the form of deed, and written consents to the sharing of information between ASIC and the appropriate regulator. Depending on whether the body is a dual-regulated body, the appropriate regulator will be both the FCA and the PRA, or only the FCA.

A body that is currently relying on the principal class order, and is not a dual-regulated body (ie the relevant appropriate regulator of the body is the FCA), will not be required to provide new or amending deeds or written consents to ASIC as the existing deeds and written consents provided to ASIC will have satisfied the principal class order.

A body that is currently relying on the principal class order, and is a dual-regulated body (ie the relevant appropriate regulator of the body is both the FCA and the PRA), will be required to provide new or amending deeds or written consents to ASIC as the existing deeds and written consents provided to ASIC will not have satisfied the principal class order. A transitional provision is included in the amending class order to enable some lead time for dual-regulated bodies that are currently relying on the principal class order to provide new or amending deeds and written consents that reference both the FCA and the PRA. The transitional provision operates until 31 March 2014. A dual-regulated body that fails to provide these new or amending documents to ASIC before 31 March 2014 will not be able to rely on the principal class order.

The class order also makes consequential amendments to the definitions of ‘overseas regulatory authority’ and ‘UK regulatory requirements’ to include reference to both the FCA and the PRA.

4. Consultation

ASIC consulted with our regulatory counterparts in the United Kingdom before making this amending class order, principally for the purposes of clarifying the scope and effect of the recent legislative changes in that jurisdiction. ASIC did not engage in further consultation as the amendments made to the principal class order are of a minor and technical nature and do not substantially alter the existing policy settings as set out in ASIC Regulatory Guide 176.

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 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*). The principal class order grants conditional relief from the requirement to hold an Australian financial services licence to UK-regulated financial services providers that provide financial services in Australia only to wholesale clients.

The amendments comprise updating definitional references in the principal class order to reflect the changes to the legislative regime in the UK, which took effect on 1 April 2013.

The definitions affected include ‘Part 4A Permission’ (which replaces ‘Part IV Permission’), ‘Financial Conduct Authority’ (the *FCA*), ‘Prudential Regulation Authority’ (the *PRA*), and other consequential changes to accommodate bodies that are regulated by the FCA and PRA.

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.