

Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 655A(1), 673(1), 741(1) and 1020F(1) —
Amendment

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 655A(1), 673(1), 741(1) and 1020F(1) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is ASIC Class Order [CO 13/854].

Commencement

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (**FRLI**) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of **register**). The FRLI may be accessed at <http://www.frli.gov.au/>.

Amendments

4. ASIC Class Order [CO 04/523] is amended by:
 - (a) omitting “after subsection 609(10)” and substituting “after subsection 609(16) (as notionally inserted by ASIC Class Order [CO 12/1209])”; and
 - (b) in notional subsections 609(11) to (13) of the Act:
 - (i) renumbering notional subsection (11) as notional subsection (17A) and inserting, as a heading to the subsection, “*IDPS operators*”; and
 - (ii) renumbering notional subsection (12) as notional subsection (17B) and in the subsection:
 - (A) omitting “Subsection (11)” and substituting “If ASIC Class Order [CO 02/294] (*old IDPS Class Order*) applies to the operator of an IDPS due to the operation of ASIC Class Order [CO 13/763], subsection (17A)”; and
 - (B) omitting “of an IDPS”; and
 - (C) omitting “unable to the rely” and substituting “unable to rely”; and
 - (D) before “IDPS Class Order” (wherever occurring), inserting “old”; and

(E) omitting “paragraph (11)(b)” and substituting “paragraph (17A)(b)”;

(iii) omitting notional subsection (13) and substituting:

“(17C) Subsection (17A) does not apply to a person if ASIC has given a notice in writing to the person stating that subsection (17A) does not apply to the person and has not withdrawn that notice.

(17D) In subsections (17A) to (17C), **IDPS** and **operator** have the same meaning as in subsection 912AD(42).

Note: Notional subsection 912AD(42) is inserted by ASIC Class Order [CO 13/763].”; and

(c) after the heading “**Interpretation**”, omitting “subsection 609(13)” and substituting “subsection 609(17D).”.

2. ASIC Class Order [CO 00/455] is amended by:

(a) omitting “after subsection 609(9)” and substituting “after subsection 609(16) (as notionally inserted by ASIC Class Order [CO 12/1209])”; and

(b) in notional subsections 609(9A) to (9C) of the Act:

(i) omitting notional subsection (9A) and substituting:

“*Collective action by institutions*

(18A) In this subsection and in subsections (18B) and (18C):

institution means a body corporate whose primary functions are to:

(a) pool the funds of persons to whom the body corporate owes a fiduciary duty, or a contractual duty under a life insurance policy; and

(b) invest the funds of any of the following:

(i) a registered scheme;

(ii) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

- (iii) a statutory fund of a registered life insurance company within the meaning of the *Life Insurance Act 1995*.

subject company means where a voting agreement is entered into, the company whose meeting is the subject of the voting agreement.

voting agreement means an agreement between two or more institutions relating to voting in a particular way, on a particular issue, or abstaining from voting, at a specified or a proposed meeting of a company in relation to which the institutions have voting power.”; and

- (ii) renumbering notional subsection (9B) as notional subsection (18B); and
- (iii) renumbering notional subsection (9C) as notional subsection (18C); and
- (c) omitting notional subsection 671B(8) of the Act and substituting:

“*Collective action by institutions*

 - (8) For the purposes of this section, and of the definition of ***substantial holding*** in section 9, disregard any relevant interests or voting power in securities which is disregarded for the purposes of Chapter 6 because of subsections 609(18A) to (18C)”;
- (d) omitting notional subsection 671B(9) of the Act and substituting:

“(9) In this subsection and in subsections (10) to (16):

institution, subject company and ***voting agreement*** have the meanings given in subsection 609(18A).

meeting means the meeting of a subject company.

relevant event means either:

 - (a) entering into a voting agreement; or
 - (b) a party to a voting agreement becoming aware of a change in relevant interests referred to in subsection (11) or (12).”;
- (e) after the heading “**Interpretation**”:
 - (i) omitting ““institution”” and substituting “***institution***”; and

- (ii) omitting ““voting agreement”” and substituting “**voting agreement**”; and
 - (iii) omitting ““this jurisdiction”” (wherever occurring) and substituting “**this jurisdiction**”.
3. ASIC Class Order [CO 12/1209] is amended by:
- (a) in paragraph 4, inserting as a heading to notional subsection 609(14) of the Act, “*ASIC*”; and
 - (b) in the note after paragraph 4, omitting “[CO 03/634]” and substituting “[CO 13/520]”.
4. ASIC Class Order [CO 09/425] is amended by, in subparagraph 14(a), omitting subparagraph (a)(ii) of the definition of *custodian* and substituting:
- “(ii) covers the operation of an IDPS (as defined in ASIC Class Order [CO 13/763]); or”.
5. ASIC Class Order [CO 11/272] is amended by:
- (a) in subparagraph 6(a), in notional subsection 671B(3A) of the Act:
 - (i) omitting “**Information that need not be given.**”; and
 - (ii) inserting, as a heading to the subsection, “*Information that need not be given*”; and
 - (b) in subparagraph 6(b), in notional subsection 671B(4A) of the Act:
 - (i) omitting “**Information that need not be accompanied by certain securities lending agreements.**”; and
 - (ii) inserting, as a heading to the subsection, “*Information that need not be accompanied by certain securities lending agreements*”.

Dated this 26th day of September 2013

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission