

ASIC CLASS ORDER [CO 13/1200]

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 13/1200] (the Class Order) under paragraphs 1020F(1)(a) and 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

Paragraph 1020F(1)(c) of the Act 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

In December 2012, ASIC consulted on a range of proposals for relief from section 1017D of the Act for certain issuers of financial products in Consultation Paper 196: *Periodic statements for quoted and listed managed investment products and relief for AQUA products*.

Subsection 1017D(1) imposes an obligation on issuers of financial products that have an investment component to give retail investors periodic statements when the financial statements are either offered or applied for in this jurisdiction. The financial products covered include interests in listed or quoted managed investment schemes. Specific requirements for the content that must be included in a periodic statement are prescribed under subsection 1017D(5).

However, the issuers of interests in listed or quoted managed investment schemes face practical difficulties when preparing periodic statements that comply with s1017D(5). These difficulties arise mainly as a result of issuers and their service providers not knowing the transaction price that an investor bought or sold their interest in the scheme on market.

2. Purpose of the Class Order

The purpose of the Class Order is to overcome the identified practical difficulties referred to above and assist issuers comply with section 1017D.

The Class Order provides for transition periods during which compliance with section 1017D will not be required. These are intended to help issuers of interests in registered schemes that are quoted AQUA products or quoted ED securities prepare for compliance by modifying their systems and procedures to prepare periodic statements in a manner that complies with their obligations as modified by this Class Order.

The Class Orders makes declarations that modify the obligations under section 1017D to assist issuers of interests in registered schemes that are quoted AQUA products or quoted ED securities prepare compliant periodic statements. In particular, the modified requirements take account of the fact that issuers may not know the price at which interests have been traded and require reporting on an aggregated basis where the interests are stapled with another financial product.

3. Operation of the class order

Exemption

Paragraph 4 of the Class Order makes issuers of interests in registered managed investment schemes quoted on the AQUA market of the ASX exempt from having to give periodic statements to retail holders of those interests under subsection 1017D(1) for reporting periods ending on or before 31 December 2013.

This exemption only applies in relation to a financial product if that financial product remains admitted to Trading Status for the duration of the reporting period.

Paragraph 6 of the Class Order makes issuers of interests in registered managed investment schemes that are quoted ED securities exempt from having to give periodic statements to retail holders of those interests under subsection 1017D(1) for reporting periods ending on or before 29 June 2014.

This exemption only applies in relation to a financial product if that financial product remains a quoted ED security for the duration of the reporting period.

Declaration

The Declaration applies in relation to an interest in a registered scheme that is an AQUA Product that is admitted to Trading Status, or is a quoted ED security.

The substantive effect of the Declaration modifies the application of section 1017D to such a financial product by changing the information required in the periodic statement, as follows:

- (a) The Class Order introduces a specific requirement for an issuer to include in the periodic statement information on the extent to which the financial product has achieved its investment objectives:
 - i. over the last 12-month financial year; and
 - ii. the five year period ending at the end of the last financial year, or if the scheme had been registered for a shorter period prior to the end of the last financial year, that shorter period.
- (b) The Class Order modifies the information required to be provided in relation to an interest in a registered scheme forming part of a stapled security, including requiring costs, fees and other information to be provided in relation to the stapled security as a whole.
- (c) The Class Order modifies the information required so that a periodic statement does not need to contain the amount per interest in relation to a transfer, or, if applicable, stapled security paid under the transfer, the total amount paid under the transfer or any other amounts in dollars in relation to the transfer if the issuer is not aware of the price at which the holder acquired or disposed of interests in the registered scheme during the reporting period, but must instead include transfer dates and other explanatory information.
- (d) Issuers must include an explanation of why the price per interest or stapled security for the transfer and the total dollar value of the transfer have not been included.
- (e) The periodic statement also does not need to include the return on investments provided that the issuer is not able to calculate the return on investment during the reporting period and the periodic statement includes an explanation why this information is not included and describes how it can be obtained or calculated.

It is open to issuers to supplement information required under paragraph (a) by including in the periodic statement a reference to information previously provided to investors, including instructions on how to obtain this information.

Issuers may still use another price, such as the net asset value per interest, in place of the price at which the holder acquired or disposed of interests provided this price is not known the issuer and provided the issuer is satisfied that using a replacement price will not mislead investors. If a replacement price is used, in order to ensure that the use of the replacement price is not misleading, issuers should explain prominently that a replacement price has been used, why they have used it and where investors may be able to obtain more information about the actual price of their transactions.

Some of the terms in the Class Order are defined by reference to the operating rules of ASX Limited (ACN 008 624 691) on 9 October 2013. The operating rules of the ASX Limited are available on ASX Group's website <http://www.asxgroup.com.au/>.

4. Consultation

ASIC issued Consultation Paper 196: *Periodic statements for quoted and listed managed investment products and relief for AQUA products* in December 2012. ASIC received submissions from a range of industry associations and private industry bodies. ASIC also met with a number of interested parties as part of the consultation process. The submissions and feedback were considered in the making of this Class Order.

Statement of Compatibility with Human Rights

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

This legislative 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 modifies provisions of the *Corporations Act 2001* dealing with periodic reporting requirements for issuers of interests in registered managed investment schemes that are AQUA products quoted on the AQUA market (a financial market operated by the ASX), or are listed managed investment schemes traded on prescribed financial market. The modified provisions address the particular features of these products so as to ensure that the information required to be provided in periodic statements to investors takes account of these features. In particular, the modified requirements take account of the fact that issuers may not know the price at which interests have been traded and require reporting on an aggregated basis where the interests are stapled with another financial product.

The class order also exempts issuers of interests in registered managed investment schemes that are AQUA products that are admitted to Trading Status, or are quoted ED securities, from being required to give periodic statements on a transitional basis.

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.