

ASIC CLASS ORDER [CO 14/1106] 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 14/1106] under paragraphs 741(1)(b), 911A(2)(l) and 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Paragraph 741(1)(b) provides that ASIC may declare that Chapter 6D of the Act applies as if specified provisions were omitted, modified or varied as specified in the declaration. Chapter 6D of the Act regulates offers of securities.

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 of the Act applies as if specified provisions were omitted, modified or varied as specified in the declaration. Part 7.9 of the Act regulates, among other things, offers of other financial products.

Paragraph 911A(2)(l) provides that a person is exempt from the requirement to hold an Australian financial services licence for a financial service where the provision of the financial service is covered by an exemption specified by ASIC in writing and published in the *Gazette*.

1. Background

Some foreign companies listed on Australian financial markets offer CHESS Depository Interests (**CDIs**) over their shares or options to enable them to access Australian equity capital markets and investors. This is because the settlement system used for equity securities traded in Australia, ASX Clearing House Electronic Subregister System (**CHESS**), cannot be used for the transfer of securities where the issuing company is domiciled in a country whose laws do not recognise uncertificated holdings or electronic transfer of title. As a result, CDIs were developed as a method of transferring and holding foreign securities in CHESS.

ASIC Class Order [CO 14/827] (the **principal class order**) was made for the purpose of:

- (a) removing any uncertainty about how offers of CDIs over foreign shares and options are regulated under the Act;
- (b) facilitating offers of CDIs over foreign shares and options, and to assist foreign companies to make such offers in an efficient market; and
- (c) promoting better understanding for retail investors about CDIs so as to assist them to make confident and informed investment decisions.

The principal class order contains a drafting error in the numbering of the paragraphs. The drafting error does not affect the legal efficacy of the principal class order.

2. Purpose of the class order

The purpose of this amending class order is to correct the drafting error in the numbering of the paragraphs in the principal class order.

3. Operation of the class order

An attempt was made to correct the drafting error by the making of paragraph 5 of ASIC Class Order [CO 14/829] but that amending paragraph itself contained a misdescription. In any event, the misdescribed amendment in paragraph 5 of Class Order [CO 14/829] did not take effect because that class order was not gazetted.

This amending class order amends the numbering of the paragraphs in the principal class order by correcting the duplicative paragraph numbers of the principal class order.

4. Consultation

ASIC did not undertake consultation before making this amending class order as the amendment is of a minor and machinery nature.

Statement of Compatibility with Human Rights

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

ASIC Class Order [CO 14/1106]

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 amending class order merely corrects a drafting oversight in the numbering of the paragraphs of ASIC Class Order [CO 14/827], which provides relief in relation to offers of CHESS Depository Interests (CDIs) over shares or options of a foreign company.

Human rights implications

This amending class order does not engage any of the applicable rights or freedoms.

Conclusion

This amending class order is compatible with human rights as it does not raise any human rights issues.