

ASIC CLASS ORDER [CO 14/1270]

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 14/1270] under paragraphs 601QA(1)(a), 741(1)(a), 926A(2)(c), 951B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 601QA(1)(a) of the Act provides that ASIC may exempt a person from all or specified provisions of Chapter 5C of the Act.

Paragraph 741(1)(a) of the Act provides that ASIC may exempt a person from all or specified provisions of Chapter 6D of the Act.

Paragraph 926A(2)(c) of the Act provides that ASIC may declare that Part 7.6 (other than Divisions 4 and 8) of the Act apply in relation to a person or financial product or a class of persons or financial products as if specified provisions were omitted, modified or varied.

Paragraph 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

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

Class Order [CO 14/1270] amends ASIC Class Order [CO 04/194], ASIC Class Order [CO 13/763] and ASIC Class Order [CO 13/1410].

1. Background

ASIC Class Order [CO 04/194] provides conditional relief from certain Australian Financial Services (AFS) advice, conduct and disclosure requirements in the Act to operators of managed discretionary accounts in accordance with the conditions in [CO 04/194].

ASIC Class Order [CO 13/763] provides relief from certain AFS advice, conduct and disclosure requirements in the Act to operators of investor directed portfolio services and modifies Part 7.6 (other than Divisions 4 and 8) of the Act to impose certain obligations on such operators.

ASIC Class Order [CO 13/1410] modifies Part 7.6 (other than Divisions 4 and 8) of the Act to impose minimum standards on custodians for holding custodial property.

2. Purpose of the class order

Each of the ASIC Class Orders [CO 04/194], [CO 13/763] and [CO 13/1410] refers to the term “securities” in relation to the circumstances in which certain assets may be held on behalf of clients without separating them from assets held for other clients. The Act contains different definitions of “securities” depending on the context in which it is used: see s 92 of the Act. The purpose of Class Order [CO 14/1270] is to clarify the meaning of the term “securities” in those principal class orders by expressly providing that the term is as defined in subsection 92(1) of the Act.

3. Operation of the class order

[CO 14/1270] amends each of [CO 04/194], [CO 13/763] and [CO 13/1410] by replacing the relevant reference to “securities” in each of those class orders with “securities (as defined in subsection 92(1))”.

4. Consultation

In preparing [CO 14/1270], we have not undertaken consultation, as the amendment merely clarified the intended meaning, as would have been expected, and provides additional certainty and flexibility to the persons subject to the relevant obligations. We have contacted industry bodies representing entities impacted by this class order to advise them of the ASIC's intention to provide the clarification.

ASIC's assessment is that the class order will have a minor and machinery impact and therefore no Regulation Impact Statement is required.

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

ASIC Class Order [CO 14/1270]

This legislative instrument 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 legislative instrument

The purpose of this legislative instrument is to amend ASIC Class Orders [CO 04/194], [CO 13/763] and [CO 13/1410] (the principal class orders). The principal class orders relate to operators of managed discretionary accounts, operators of investor director portfolio services and custodians. Among other matters, the principal class orders impose requirements relating to the circumstances in which those persons may hold certain assets on behalf of clients without separating them from assets held for other clients.. Each of the principal class orders refers to the term “securities” in this regard.

[CO 14/1270] amends the principal class orders to clarify the meaning of the term “securities” when used in the principal class orders.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.