

ASIC CLASS ORDER [CO 09/465]

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 09/465] *Variation of Class Orders [CO 04/671] and [CO 05/26]* under s601QA, s741(1) and 1020F(1) of the *Corporations Act 2001* (the Act).

Subsection 601QA provides that ASIC may exempt a class of persons from the provisions of Chapter 5C of the Act. Subsection 741(1) provides that ASIC may exempt a class of persons from the provisions of Chapter 6D of the Act. Subsection 1020F(1) provides that ASIC may exempt a class of persons from the provisions of Part 7.9 of the Act.

1. Background

CO 04/671

ASIC Class Order [CO 04/671] provides relief from the on-sale provisions of the Corporations Act (s707(3) and (4) and s1012C(6) and (7)). It allows for the on-sale of certain financial products such as shares or interest in a managed investment scheme that were issued to persons without a prospectus or PDS under various statutory or ASIC class order exemptions.

In particular, it allows retail investors who have been issued with shares or interests in a managed investment scheme under ASIC Class Order CO 02/831 *Share purchase plans* or CO 02/832 *Interest purchase plans* to on-sell their investments without that retail investor themselves needing to provide various disclosures at the time of the sale. Recently, CO 02/831 and CO 02/832 have been revoked by ASIC Class Order [09/425] *Share and interest purchase plans* with effect from 1 September 2009. CO 09/425 replaces the relief provided by CO 02/831 and CO 02/832.

CO 05/26

ASIC Class Order [CO 05/26] provides relief to allow a responsible entity of a managed investment scheme to set the price of interests to be issued under an interest purchase plan, on certain conditions. An interest purchase plan is a plan for the offer to existing investors of interests by a responsible entity of a managed investment scheme listed on the Australian Securities Exchange Limited (ASX).

Previously, the conditions of the relief provided to responsible entities to set the issue price under interest purchase plans was based on CO 02/832. As noted above, however,

CO 09/425 revoked CO 02/832 with effect from 1 September 2009. CO 09/425 substituted new obligations on responsible entities offering interest purchase plans.

2. Purpose of the class order

What is the problem addressed by the class order?

Variation to CO 05/26

Share and interest purchase plans generally provide existing securityholders with a convenient means of obtaining additional shares or interests, often at a discount to the market and without brokerage fees or stamp duty. Without relief from the prospectus provisions of the Act, it is unlikely that such schemes would be offered, disadvantaging the smaller investors who are the most likely to participate in them and obtain the most benefit from them.

Allowing the responsible entity of a managed investment scheme to set the issue price for interests under an interest purchase plan means that they are more likely to offer such plans. Without the relief provided by CO 05/26, when new interests in a scheme are issued, the issue price must be the price that the constitution dictates, rather than a price that the scheme's responsible entity has set.

Why is a class order necessary to address this problem?

The purpose of the relevant section in CO 05/26 that is being amended is to allow the responsible entity of a managed investment scheme to set the issue price for interests issued under an interest purchase plan on certain conditions. As those conditions have now changed (due to the implementation of CO 09/425) it is necessary to vary CO 05/26 to reflect that new instrument.

Similarly, it is necessary to vary CO 04/671 to ensure that on-sale relief is still available where shares or interests are issued without disclosure and in reliance on CO 09/425.

3. Operation of the class order

Variations

CO 09/465 changes the cross referencing in other ASIC relief instruments (such as CO 05/26 and CO 04/671) to reflect our updated relief for share and interest purchase plans.

CO 09/465 also modifies the Act by changing an existing ASIC class order (CO 05/26) so that responsible entities of managed investment schemes may set the price of interests to be issued under interest purchase plans on certain conditions.

Where relief applies

In CO 04/671

Relief from the on-sale provisions will now apply where there is an issue of securities or interests in a managed investment scheme without prospectus disclosure or without a PDS, where the issuer relied upon ASIC's new share and interest plan relief; previous share or interest plan relief or individual instruments of relief similar to ASIC's class orders.

In CO 05/26

The variation in paragraph 5 of CO 09/465 will allow the responsibility entity of a managed investment scheme to set the issue price of an interest purchase plan broadly where:

- trading in the relevant class of interests have not been suspended (beyond a minimum period) from ASX;
- ASIC has not made certain determinations to prevent an issuer from relying on its relief;
- there are no existing exemptions from particular provisions of the Corporations Act.

Conditions of the relief

CO 05/26

The relief inserted by CO 09/465 into CO 05/26 is subject to various conditions. These are designed to ensure that while investors under a share or unit purchase plan will not receive a prospectus:

- they will have access to information about their investment through continuous disclosure and market pricing due to quotation of the issuer;
- the offer will be at a discount to market price during a given period before the offer or issue; and
- there is generally a \$15,000 limit worth of shares or units that can be issued to investors without a prospectus or PDS in a rolling 12 month period.

4. Consultation

Before making CO 09/425, ASIC consulted generally with relevant industry stakeholders. The consultation process included the publication of Consultation Paper

103 *Review of share purchase plan threshold* in December 2008, which outlined ASIC's proposals for this class order relief and sought comments from stakeholders. CP 103 did not specifically consult on the precise amendments to CO 04/671 and CO 05/26 (as inserted by CO 09/465) as these were minor or machinery changes needed to give effect to our new relief on share purchase plans more generally.