

ASIC Class Order [CO 05/1230]

Credit rating agencies

Issued 15/12/2005

Effective 31/12/2005 (see paragraph 3 of this class order for exceptions)

Related documents: [IR 05/63]

Class Order [CO 05/1230] grants ongoing relief to certain credit rating agencies on condition that they, among other things, include appropriate warnings in their rating material and comply with paragraph 4.1 of the International Organization of Securities Commissions' Code of Conduct Fundamentals for Credit Rating Agencies.

[CO 05/1230] does not extend to credit rating statements, opinion or research about managed investment schemes or superannuation entities.

This instrument has effect under Paragraph 911A(2)(l) and Subsections 926A(2) and 951B(1) of the *Corporations Act 2001*.

This compilation was prepared on 22 May 2008 taking into account amendments up to [CO 08/276]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 911A(2)(l) and Subsections 926A(2) and 951B(1) — Exemptions and Revocation

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*):
 - (a) grants the exemptions set out in this instrument under subsections 926A(2) and 951B(1) of the *Corporations Act 2001* (the *Act*); and
 - (b) effects the revocation set out in this instrument under paragraph 911A(2)(l) of the *Act*.

Title

2. This instrument is ASIC Class Order [CO 05/1230].

Commencement

3. This instrument (other than paragraph 10) commences on 31 December 2005. Paragraph 10 commences on the later of:
 - (a) 31 December 2005; and
 - (b) the gazettal of this instrument.

Exemptions for eligible credit rating agencies

4. An eligible credit rating agency that provides general advice (the *advice*) that is or is part of a credit rating statement, opinion or research does not have to comply with:
 - (a) subsection 911A(1) in relation to the provision of the advice; and
 - (b) where the person is a financial services licensee—Divisions 2 and 4 of Part 7.7 of the Act in relation to the provision of the advice.

Where exemptions are available

5. The exemptions in paragraph 4 are only available where both of the following apply:
 - (a) the advice is given in the ordinary course of business of the eligible credit rating agency;
 - (b) the advice includes or is accompanied by statements to the effect that:
 - (i) the eligible credit rating agency does not hold an Australian financial services licence under the Act covering the provision of the advice; and
 - (ii) the advice has been prepared without taking account of any recipient's objectives, financial situation or needs; and
 - (iii) the recipient should, before acting on the advice, consider the appropriateness of the advice, having regard to their own objectives, financial situation and needs.

Conditions

6. An eligible credit rating agency that takes advantage of any of the exemptions in paragraph 4 must:
 - (a) comply with paragraph 4.1 of the Code of Conduct Fundamentals for Credit Rating Agencies as at December

2004 issued by the Technical Committee of the International Organisation of Securities Commissions; and

- (b) if the agency is not a financial services licensee—comply with a direction set out in a written notice given to it by ASIC as if it were such a licensee and the direction was given under section 912C of the Act.

Note: Section 912C applies of its own force in relation to a financial services licensee including in relation to activities covered by this instrument even if their licence does not cover those activities.

- 7. An eligible credit rating agency that does not comply with these conditions cannot take advantage of those exemptions.

Interpretation

- 8. In this instrument:

eligible credit rating agency means each of the following:

- (a) Moody's Investors Service Pty Limited ACN 003 399 657;
- (b) Standard & Poor's (Australia) Pty Limited ACN 007 324 852;
- (c) Fitch Australia Pty Limited ACN 081 339 184.

[Historical note: Definition of 'eligible credit rating agency' amended 27/5/2008 [CO 08/276] by deleting subparagraph (d). Subparagraph (d) formerly read:

'(d) Rapid Ratings Pty Limited ACN 096 967 485'.]

general advice has the meaning given by subsection 766B(4) of the Act.

superannuation entity has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

- 9. For the avoidance of doubt, in this instrument a *credit rating statement, opinion or research* does not include a statement, opinion or research about:
 - (a) a managed investment scheme (other than a cash management trust or cash common fund); or
 - (b) a superannuation entity; or
 - (c) an interest in such a scheme or entity.

Revocation

- 10. ASIC Class Order [CO 03/1093] is revoked.

Dated this 15th day of December 2005

Signed by Brendan Byrne

as a delegate of the Australian Securities and Investments
Commission

Notes to ASIC Class Order [CO 05/1230]**Note 1**

ASIC Class Order [CO 05/1230] (in force under Paragraph 911A(2)(l) and Subsections 926A(2) and 951B(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 05/1230]	15/12/2005	31/12/2005	-
[CO 08/276]	21/5/2008	27/5/2008	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 8	am. [CO 08/276]