



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 253

# Fundraising: Facilitating offers of CHESSE Depository Interests

October 2014

### About this guide

This is a guide for foreign companies listed on Australian financial markets, their advisers, and other persons involved in offers of CHESSE depository interests (CDIs) over securities of a foreign company.

It explains:

- how our relief in Class Order [CO 14/827] *Offers of CHESSE Depository Interests* modifies the disclosure provisions in Ch 6D and gives relief from the licensing provisions in Pt 7.6 of the *Corporations Act 2001* to facilitate offers of CDIs over underlying foreign securities;
- when we will consider granting individual relief to facilitate offers of CDIs; and
- how to provide effective disclosure for offers of CDIs.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in October 2014 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Some foreign companies listed on Australian financial markets offer CHESSE depository interests (CDIs) over their securities to investors in Australia. This guide provides guidance for foreign companies listed on Australian financial markets, their advisers, and other persons involved in offers of CDIs over securities of a foreign company. It explains:

- our relief in Class Order [CO 14/827] *Offers of CHESSE Depository Interests* to facilitate offers of CDIs over 'underlying foreign securities' quoted on certain 'approved financial markets' in Australia (see Section B);
- when we will consider granting individual relief for offers of CDIs (see Section B); and
- how to provide effective disclosure for offers of CDIs (see Section C).

In this section, we explain what CDIs are and how they are currently used in the market. We also describe our general approach to facilitating offers of CDIs over securities of a foreign company.

### What are CDIs and how are they used?

RG 253.1 Some foreign companies listed on Australian financial markets offer CDIs over their securities to enable them to access Australian equity capital markets and investors.

Note: CDIs may be issued over foreign securities quoted on ASX Limited (ASX) (including under ASX's AQUA rules), National Stock Exchange of Australia (NSXA), Asia-Pacific Stock Exchange (APX) and SIM Venture Securities Exchange (SIM VSE). CDIs may also be traded on the secondary financial market operated by Chi-X Australia Limited (Chi-X).

RG 253.2 The settlement system used for equity securities traded in Australia, ASX Clearing House Electronic Subregister System (CHESSE), 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 CHESSE. All CDIs are currently settled using CHESSE.

RG 253.3 A CDI is a unit of beneficial ownership in a financial product of a foreign body, where the underlying financial product is registered in the name of a depository nominee. Currently CHESSE Depository Nominees Pty Limited (CDN) is the only depository nominee that has been appointed in relation to CDIs over foreign securities.

Note: CDIs are similar to American Depository Interests in the United States and CREST Depository Interests in the United Kingdom.

- RG 253.4 While CDIs may be issued over different types of financial products, this regulatory guide is for CDIs where the underlying financial products are shares of a foreign company, beneficial interests in shares of a foreign company or options to acquire, by way of issue, shares of a foreign company (collectively referred to as ‘underlying foreign securities’).
- RG 253.5 The ASX Settlement Operating Rules, together with the listing rules and other rules of ASX, NSXA, APX and SIM VSE (the ‘approved financial markets’), set out the obligations and responsibilities of the depository nominee and the foreign company, and the rights of CDI holders.
- Note: The ASX Settlement Operating Rules apply to CDIs over foreign securities quoted on each of the approved financial markets and settled using CHESS.
- RG 253.6 Most importantly, the ASX Settlement Operating Rules require the foreign company to ensure that all economic benefits and rights associated with the underlying foreign securities (such as dividends, the right to participate in corporate actions and the right to vote) flow through to CDI holders as if they were the legal owners of the underlying foreign securities.

## ASIC’s facilitation of offers of CDIs

- RG 253.7 We recognise the benefits that CDIs provide to:
- (a) foreign companies—by giving them access to Australian financial markets; and
  - (b) investors—by giving them better access to investment opportunities in foreign companies.
- RG 253.8 We aim to facilitate offers of CDIs over underlying foreign securities that are quoted on Australian financial markets, provided the disclosure requirements under the Corporations Act for offers of securities are complied with.
- RG 253.9 While CDIs have been a feature of Australian financial markets since the mid-1990s, there is uncertainty as to how offers of CDIs over underlying foreign securities are regulated under the Corporations Act, particularly given that depository interests are not defined or referred to in the Corporations Act. This has resulted in different views being adopted in the market.
- RG 253.10 In particular, there are differing views in the market about how CDIs are characterised, which disclosure regime applies to offers of CDIs (i.e. Ch 6D or Pt 7.9 of the Corporations Act) and who offers and issues CDIs (i.e. the foreign company or the depository nominee).
- RG 253.11 Our approach to regulating offers of CDIs involves ‘looking through’ the CDI to the underlying foreign security, so that offers of CDIs are regulated under the Corporations Act in the same way that offers of the underlying foreign securities would be regulated.

## Our relief for offers of CDIs

### Class order relief

- RG 253.12 We have given class order relief in [CO 14/827] for offers for the issue or sale of CDIs, where the underlying foreign securities are quoted on an approved financial market and are held by CDN as the depository nominee.
- RG 253.13 The purpose of our relief is to remove any uncertainty about how offers of CDIs over underlying foreign securities are regulated under the Corporations Act. Our relief will also help to ensure that these offers take place efficiently and that investors receive adequate disclosure about the nature of CDIs.
- RG 253.14 Table 1 and Section B of this guide set out in detail the requirements of our class order relief in [CO 14/827].

**Table 1: Overview of our relief in [CO 14/827] for offers of CDIs**

Topic	Description	Reference
What does our relief do?	[CO 14/827] provides relief so that an offer of CDIs over underlying foreign securities is regulated as an offer of securities under the disclosure provisions in Ch 6D of the Corporations Act.	Section B RG 253.20– RG 253.23
Who offers and issues the CDIs?	[CO 14/827] provides relief so that the foreign company that offers and issues the underlying foreign securities is taken to be the offeror and issuer of the CDIs.	Section B RG 253.25– RG 253.29
What types of CDIs are covered by our relief?	[CO 14/827] applies to offers of CDIs where the underlying foreign securities are: <ul style="list-style-type: none"> <li>• shares of a foreign company, including shares described as shares in a foreign exchange traded fund (ETF);</li> <li>• beneficial interests in shares of a foreign company; or</li> <li>• options to acquire, by way of issue, shares of a foreign company: <ul style="list-style-type: none"> <li>○ quoted on, or proposed to be quoted on, ASX (including under ASX's AQUA rules), NSXA, APX or SIM VSE; and</li> <li>○ held by CDN, as the depository nominee.</li> </ul> </li> </ul>	Section B RG 253.30– RG 253.41
What types of offers does our relief cover?	[CO 14/827] applies to: <ul style="list-style-type: none"> <li>• offers for the issue of CDIs by a foreign company (which are treated as offers for the issue of the underlying foreign securities); and</li> <li>• offers for the sale of CDIs by a CDI holder (which are treated as an on-sale of the underlying foreign securities).</li> </ul>	Section B RG 253.42– RG 253.48
What licensing relief is provided?	[CO 14/827] provides relief, for the avoidance of doubt, exempting a foreign company (other than a foreign investment company covered by s766C(5) of the Corporations Act) from the requirement to hold an Australian financial services (AFS) licence for 'arranging' for CDN or a CDI holder (or a proposed CDI holder) to deal in CDIs over its underlying foreign securities.	Section B RG 253.49– RG 253.55

Topic	Description	Reference
What other relief is provided?	<p>[CO 14/827] provides relief to ensure Ch 6D operates effectively for offers of CDIs, so that:</p> <ul style="list-style-type: none"> <li>• a foreign company with CDIs over all or some of its underlying foreign securities is able to rely on s708AA for rights issues;</li> <li>• a foreign company with CDIs over all or some of its shares is able to rely on s708(13) for dividend reinvestment plans and bonus share plans;</li> <li>• references to the provisions of Ch 2M are to be read as references to s601CK (where s601CK applies) or, otherwise, the financial reporting laws in the foreign company's place of origin; and</li> <li>• references to orders under s340 or 341 are to be read as references to declarations under s601CK(7) or exemptions (however described) under the financial reporting laws in the foreign company's place of origin.</li> </ul>	<p>Section B</p> <p>RG 253.56– RG 253.59</p>
What information is required to be disclosed?	<p>[CO 14/827] requires a foreign company to explain the differences between holding CDIs and holding the underlying foreign securities in any Ch 6D disclosure document used for an offer to issue CDIs.</p>	<p>Section C</p> <p>RG 253.73– RG 253.79</p>

### Individual Relief

- RG 253.15 We will consider granting individual relief to facilitate:
- the use of a depository nominee other than CDN (see RG 253.64–RG 253.66); and
  - offers of CDIs over underlying foreign securities quoted on an Australian financial market other than one of the approved financial markets (see RG 253.62–RG 253.63).
- RG 253.16 We will also consider granting individual relief where there is doubt about whether a particular offer of CDIs falls within our class order relief, or to facilitate offers of CDIs over interests in foreign managed investment schemes: see RG 253.67–RG 253.68.

### Disclosure to investors about CDIs

- RG 253.17 Section C of this guide provides guidance to assist foreign companies to:
- comply with the requirement in [CO 14/827] to explain the differences between holding CDIs and holding the underlying foreign securities in any Ch 6D disclosure document for an offer to issue CDIs; and
  - provide effective disclosure for offers of CDIs and, more broadly, in other communications with CDI holders.

## B Relief for offers of CDIs

### Key points

In this section we:

- explain our general approach to regulating offers of CDIs over underlying foreign securities and our interpretation of how the Corporations Act applies to these offers;
- discuss how our class order relief in [CO 14/827] modifies the disclosure provisions in Ch 6D and gives relief from the licensing provisions in Pt 7.6 of the Corporations Act to facilitate offers of CDIs over underlying foreign securities; and
- set out some of the circumstances in which we may consider granting individual relief to facilitate offers of CDIs that do not meet the requirements of [CO 14/827].

### Our general approach to offers of CDIs

RG 253.18 Our general approach to regulating offers of CDIs involves ‘looking through’ the CDI to the underlying foreign securities, so that offers of CDIs are regulated under the Corporations Act in the same way that offers of the underlying foreign securities would be regulated.

RG 253.19 We consider that:

- (a) offers of CDIs over underlying foreign securities should be regulated by Ch 6D of the Corporations Act—offers of a foreign company’s securities are regulated by Ch 6D, therefore, offers of CDIs (representing equitable interests in those securities) should be subject to the same disclosure regime as the underlying foreign securities;
- (b) where disclosure is not required for an offer of the underlying foreign securities, disclosure should also not be required for an offer of CDIs over those securities—that is, if an offer of the underlying foreign securities is exempt from disclosure under Ch 6D (e.g. because of s708, 708AA, 708A or ASIC class order relief), then any offer of CDIs should also be exempt; and
- (c) where Ch 6D disclosure is required for an offer of CDIs (i.e. because it would be required for an offer of the underlying foreign securities) then the disclosure should be provided by the foreign company and not the depository nominee.

## Class order relief

### What does our relief do?

- RG 253.20 [CO 14/827] gives relief so that an offer of CDIs over underlying foreign securities is regulated as an offer of securities under Ch 6D of the Corporations Act.
- RG 253.21 Our class order achieves this by modifying Ch 6D of the Corporations Act so that:
- (a) CDIs are treated as securities (and not as other financial products to which Div 2 of Pt 7.9 of the Corporations Act applies);
  - (b) an offer for issue of CDIs is taken to be an offer for issue of the underlying foreign securities by the foreign company; and
  - (c) an offer for sale of CDIs is taken to be an offer for sale of the underlying foreign securities.
- RG 253.22 This reflects our view that a CDI over a share of a foreign company is an equitable or beneficial interest in the share and is, therefore, a 'security' within the meaning of s761A of the Corporations Act.
- RG 253.23 An option to acquire, by way of issue, a share of a foreign company is a 'security' within the meaning of s761A of the Corporations Act. Therefore, we consider that CDIs over these options should be regulated as an offer of securities under Ch 6D of the Corporations Act.
- RG 253.24 However, we understand that there may be differing views in the market as to whether CDIs over underlying foreign securities are characterised as securities, derivatives or warrants under the Corporations Act—causing uncertainty as to which disclosure regime applies. Our class order relief removes this uncertainty.

### Who offers and issues CDIs?

- RG 253.25 [CO 14/827] gives relief so that where disclosure is required under Ch 6D of the Corporations Act for an offer to issue CDIs over underlying foreign securities, it is the foreign company (and not the depository nominee) who is required to provide disclosure.
- RG 253.26 Our class order achieves this by modifying the Corporations Act in relation to offers for issue of CDIs, so that the foreign company that offers and issues the underlying foreign securities is taken to be the offeror and issuer of the CDIs.

- RG 253.27 This reflects our view that it is the foreign company, not the depository nominee, who is the entity that:
- (a) for the purpose of Ch 6D, offers and issues the CDIs within the meaning of s700(3) of the Corporations Act (i.e. it is the foreign company who has the capacity, or who agrees, to issue or transfer the CDIs if the offer is accepted); and
  - (b) for the purpose of Ch 7, issues the CDIs within the meaning of s761E(4) of the Corporations Act (i.e. it is the foreign company who is responsible for the obligations owed in relation to the CDI, specifically, the obligations owed under the ASX Settlement Operating Rules).

- RG 253.28 We recognise that there are differing views in the market about whether the foreign company or the depository nominee offers and issues CDIs.

Note 1: In 2012, the then Government considered that the depository nominee, in the context of depository interests issued over Commonwealth Government Securities, would likely be the entity responsible for providing disclosure to retail clients under Ch 7 of the Corporations Act: see the Revised Explanatory Memorandum to the Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012.

Note 2: ASIC also previously held the view that the depository nominee (not the foreign company) is the entity that offers and issues CDIs (and is, therefore, the entity that is required to provide disclosure to investors): see Class Order [CO 02/311] *CHES Depository Nominees Pty Ltd – CDIs* (now revoked) and Class Order [CO 02/312] *Part 7.11, Division 4 financial products for ASTC* (as amended by Class Order [SCO 09/27] *Variation of Class Orders [CO 02/312] and [CO 05/26]* and [CO 14/829] *Variation of Class Order [CO 02/312]*).

- RG 253.29 Our class order relief removes any uncertainty as to who the offeror and the issuer are for an offer to issue CDIs over underlying foreign securities.

Note: [CO 14/827] also modifies s1017F so that a foreign company is the issuer of CDIs for the purposes of that section and is, therefore, required to confirm transactions under which retail clients acquire CDIs.

### **What types of CDIs are covered by our relief?**

- RG 253.30 Our relief in [CO 14/827] facilitates offers of CDIs, where the underlying foreign security is:
- (a) a share of a foreign company, including a share of a foreign company described as an ETF;
  - (b) a beneficial interest in shares of a foreign company; or
  - (c) an option in a foreign company to acquire, by way of issue, shares of the foreign company:
    - (i) quoted on, or proposed to be quoted on, an approved financial market; and
    - (ii) held by CDN, as the depository nominee.

**CDIs over underlying foreign securities**

RG 253.31 Our relief applies specifically to CDIs where the underlying foreign securities are shares (including beneficial interests in shares) or options to acquire, by way of issue, shares of a foreign company.

Note: These CDIs are referred to in the ASX Settlement Operating Rules as CHESS units of foreign securities (CUFS) or depository interests (DIs). CUFS are issued over foreign equity securities where the legal title of the foreign securities is held in the name of an Australian depository nominee. DIs are issued over foreign equity securities where the foreign securities are held in another settlement and depository system in addition to the Australian depository nominee and, as such, have two tiers of beneficial ownership.

RG 253.32 The purpose of [CO 14/827] is to ensure that all equity fundraising by foreign companies (whether in the form of an offer of shares, beneficial interests in shares, or options to acquire shares or CDIs over those shares, interests or options) is regulated in the same way—that is, as an offer of securities under Ch 6D of the Corporations Act.

RG 253.33 Our relief applies specifically to CDIs over options in a foreign company to acquire, by way of issue, shares in the foreign company, where:

- (a) the options are, or are proposed to be, admitted to quotation on one of the approved financial markets; and
- (b) the shares to which the options relate are in a class of shares that are, or are proposed to be, admitted to quotation on that market.

RG 253.34 Our relief also applies to CDIs where, although the underlying financial product is described as a share in a foreign ETF, the underlying product is actually a share in a foreign company (and not an interest in a foreign managed investment scheme).

RG 253.35 Foreign financial products that are called ETFs may be quoted on ASX (including under ASX's AQUA rules) where the financial product traded is a security, a derivative or an interest in a managed investment scheme. Our relief in [CO 14/827] only covers CDIs over foreign ETFs where the underlying product is traded as a share, or a beneficial interest in a share, of a foreign company.

Note: Report 282 *Regulation of exchange traded funds* (REP 282) provides further discussion on foreign ETFs, including foreign ETFs trading their financial products as securities.

**CDIs where the underlying foreign securities are, or are proposed to be, quoted on an approved financial market**

RG 253.36 Our relief applies to CDIs of foreign companies listed on one of the approved financial markets (i.e. ASX, NSXA, APX or SIM VSE) as either an 'exempt foreign listing' or a standard listing, where the underlying foreign securities are, or are proposed to be, admitted to quotation. Our relief

also applies to CDIs where the underlying foreign securities are quoted under ASX's AQUA rules.

Note 1: Our relief in [CO 14/827] extends to CDIs over underlying foreign securities that are quoted and traded on secondary financial markets (e.g. Chi-X), provided the underlying foreign securities are also quoted on one of the approved financial markets.

Note 2: See RG 253.62—RG 253.63 for an explanation of the circumstances in which we will consider granting individual relief to facilitate offers of CDIs over underlying foreign securities quoted on other financial markets.

RG 253.37 This is because we are satisfied that the ASX Settlement Operating Rules, together with the listing rules and other rules of those financial markets, provide a sufficiently robust market framework for the trading and settlement of CDIs by:

- (a) setting out the obligations and responsibilities of the depository nominee and the foreign company; and
- (b) providing for the protection of the rights and entitlements of CDI holders.

Note: Foreign companies listed on NSXA, APX or SIM VSE apply through their approved listing market operator (e.g. NSXA, APX or SIM VSE) to have their foreign securities, or CDIs over their foreign securities, approved under the ASX Settlement Operating Rules for CHESS settlement purposes: see ASX Settlement Operating Rule 13.2.1. In these circumstances, foreign companies listed on NSXA, APX and SIM VSE are bound by the ASX Settlement Operating Rules. Section 13 of the ASX Settlement Operating Rules applies to CDIs over foreign securities quoted on those financial markets: see ASX Settlement Operating Rule 1.2.3.

RG 253.38 In particular, the ASX Settlement Operating Rules:

- (a) require the foreign company to ensure that all economic benefits and rights associated with the underlying foreign securities (including dividends, the right to vote, and the right to participate in rights issues and other corporate actions) flow through to CDI holders as if they were the legal owners of the underlying foreign securities;
- (b) require the depository nominee to vote only in accordance with the written instructions of CDI holders; and
- (c) prohibit the depository nominee from accepting a takeover offer unless it is instructed to do so by the CDI holder.

Note: Section 13 of the ASX Settlement Operating Rules sets out the rules governing CDIs, including CUFS and DIs (specifically, Rules 13.1–13.13). All CDIs (including those traded on NSXA and Chi-X) are currently settled using CHESS. See also CDN's *Understanding CHESS Depository Interests* and ASX Guidance Note 5 *CHESS Depository Interests (CDIs)* (GN 5) for further information about CDIs and the rights of CDI holders.

### **CDIs where CDN is the depository nominee**

RG 253.39 Our class order relief applies to offers of CDIs where CDN is acting as the depository nominee. This is because CDN is currently the only depository

nominee that has been appointed for CDIs over foreign securities quoted on ASX or NSXA (and settled using CHES).

Note: See RG 253.64–RG 253.66 for an explanation of the circumstances in which we will consider granting individual relief to facilitate the use of other depository nominees.

RG 253.40 CDN is a wholly-owned subsidiary of ASX that was created to fulfil the functions of a depository nominee, and is:

- (a) the holder of an AFS licence authorising it to provide custodial or depository services to wholesale and retail clients; and
- (b) an approved participant in the clearing and settlement facility operated by ASX Settlement.

Note: Although CDN is a wholly-owned subsidiary of ASX, foreign companies issuing CDIs on financial markets other than ASX (e.g. NSXA, APX and SIM VSE) may appoint CDN to act as the depository nominee for CDIs over their foreign securities.

RG 253.41 CDN receives no fees from investors for acting as the depository nominee for CDIs.

### What types of offers does our relief cover?

RG 253.42 Our relief in [CO 14/827] applies to offers for issue of CDIs by a foreign company, and offers for sale of CDIs by a CDI holder.

#### Offers for issue of CDIs

RG 253.43 In relation to offers for issue of CDIs, our class order relief extends to offers where disclosure:

- (a) is required under Ch 6D of the Corporations Act—including initial public offerings and secondary offerings under a prospectus, offer information statement or other Ch 6D disclosure document;
- (b) is not required because of a disclosure exception in Ch 6D of the Corporations Act—including rights issues conducted in accordance with s708AA and offers under an exception in s708 (e.g. offers under a dividend reinvestment plan or bonus share plan, placements to sophisticated or professional investors or offers under a Ch 6 takeover bid or a scheme of arrangement under Pt 5.1); and
- (c) is not required because of ASIC class order relief—including share purchase plans, employee incentive schemes, foreign takeover bids and foreign schemes of arrangement.

Note: [CO 14/827] applies to all legislative instruments made under s741. For example, Class Order [CO 03/184] *Employee share schemes*, Class Order [CO 07/9] *Prospectus relief for foreign schemes of arrangement and PDS relief for Pt 5.1 schemes and foreign schemes of arrangement*, Class Order [CO 09/68] *Prospectus and PDS relief for foreign scrip takeovers* and Class Order [CO 09/425] *Share and interest purchase plans*.

RG 253.44 Our class order relief has the effect that offers for the issue of CDIs are regulated in the same way as offers for the issue of the underlying foreign securities. For example:

- (a) an initial public offering of CDIs over underlying foreign securities would require a prospectus satisfying s710 of the Corporations Act;
- (b) secondary offerings of CDIs over underlying foreign securities that are ‘continuously quoted securities’ within the meaning of s9, would require a prospectus satisfying s713 of the Corporations Act;

Note 1: See the definition of ‘continuously quoted securities’ in s9 to determine whether CDIs are issued over continuously quoted securities. A prospectus may be required for an offer for sale of CDIs where the underlying foreign securities are not continuously quoted securities.

Note 2: Foreign companies are not prevented from relying on s713 of the Corporations Act for secondary offers of CDIs solely because ASX has granted a waiver from the requirement to quote all of the foreign company’s securities in a particular class (and to instead quote only the foreign securities underlying the issued CDIs).

- (c) offers of CDIs under a rights issue where the underlying foreign securities are ‘quoted securities’ within the meaning of s9, would require a cleansing notice to be given to the market under s708AA of the Corporations Act; and
- (d) offers of CDIs over foreign shares under a share purchase plan would require a cleansing notice to be given to the market and an offer document to be given to shareholders that discloses certain matters, as prescribed in [CO 09/425].

#### **Offers for sale of CDIs**

RG 253.45 Our class order relief has the effect that an offer for sale of CDIs is regulated as an offer for sale of the underlying foreign securities.

Note: Our relief has the effect that any cleansing notice given under s708A must be given to the relevant financial market operator within five days of the underlying foreign securities being issued: s708A(6)(a).

RG 253.46 For example, sale offers of CDIs where the underlying foreign securities are ‘quoted securities’ within the meaning of s9, would require a cleansing notice to be provided to the relevant financial market operator in accordance with s708A where the underlying securities were issued without disclosure under Ch 6D and the foreign company did not issue the underlying securities with the purpose of them being on-sold.

Note 1: [CO 14/827] gives relief so that a foreign company is not taken to have issued the underlying foreign securities with the purpose of them being on-sold merely because it issued the underlying foreign securities to CDN.

Note 2: [CO 14/827] applies to all legislative instruments made under s741. This means that Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products*—which provides relief from the disclosure requirements in Ch 6D for the on-sale

of securities that were issued under specific types of offers, including employee share schemes, share purchase plans, dividend reinvestment plans, bonus share plans and securities issued as consideration for takeover bids and schemes of arrangement (including foreign bids and foreign schemes)—extends to the on-sale of CDIs.

RG 253.47 Our class order relief extends to circumstances where the underlying foreign securities were issued (either in or outside Australia) without disclosure under Ch 6D and are subsequently converted into CDIs and sold on an Australian financial market—where the foreign company did not issue the foreign securities with the purpose of them being on-sold in Australia.

Note: In these circumstances, a cleansing notice may be required for the on-sale of the underlying foreign securities (in the form of the CDIs) within 12 months of issue of the underlying securities.

RG 253.48 Where a foreign company issues the underlying foreign securities without Ch 6D disclosure (e.g. where they are issued outside Australia or to an intermediary for whom disclosure is not required) and with the purpose of being on-sold (e.g. on an Australian financial market, after being converted into CDIs), a prospectus would be required as the cleansing notice provisions in s708A would not apply.

Note: The on-sale provisions in s707(3)–(4) of the Corporations Act are anti-avoidance provisions that are designed to minimise the opportunity for issuers of securities to avoid giving disclosure to retail investors. Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173) provides further guidance on the on-sale provisions and the circumstances in which we provide relief from the disclosure requirements in Ch 6D of the Corporations Act for the on-sale of securities.

## What licensing relief is provided?

RG 253.49 [CO 14/827] also provides licensing relief, for the avoidance of doubt, to a foreign company (other than a foreign investment company covered by s766C(5) of the Corporations Act) that issues the foreign securities underlying the CDIs. Our class order achieves this by exempting the foreign company from the requirement to hold an AFS licence for a financial service that constitutes ‘arranging’ for CDN or a CDI holder (or a proposed CDI holder) to deal in CDIs over its foreign securities.

RG 253.50 Given our view that the foreign company, not the depository nominee, is the issuer of CDIs and that the CDIs are the foreign company’s securities, we consider that:

- (a) a foreign company does not require an AFS licence for a financial service that consists of dealing in its own securities (i.e. issuing CDIs over its foreign securities), because it can rely on the self-dealing exemption in s766C(4) of the Corporations Act (provided it is not an investment company covered by s766C(5)); and

- (b) an AFS licence authorising the depository nominee to provide custodial or depository services is sufficient to cover the depository nominee's function of holding the underlying foreign securities in relation to the CDIs.

Note: Under s766C of the Corporations Act, acquiring, issuing and disposing of a financial product, and arranging for a person to engage in that conduct, constitutes 'dealing' in a financial product. However, such conduct is taken not to be dealing if it is in relation to a company's own securities: s766C(4). This is known as the 'self-dealing exemption'.

RG 253.51 The self-dealing exemption in s766C(4) of the Corporations Act does not extend to foreign investment companies that are covered by s766C(5) of the Corporations Act. Consequently, we have not extended the licensing relief in our class order to foreign investment companies that would not otherwise be able to rely on the self-dealing exemption.

RG 253.52 As CDN is currently the holder of an AFS licence, which authorises it to operate custodial or depository services, licensing relief is not necessary for the provision of services by CDN in relation to CDIs in accordance with the ASX Settlement Operating Rules. The custodial or depository service authorisation is required for the holding of the underlying foreign securities.

Note: Although the depository nominee's role in relation to CDIs does not involve it directly acquiring, issuing, underwriting, varying or disposing of CDIs, or 'arranging' for others (e.g. the foreign company or CDI holders) to deal in CDIs, the nominee's role in relation to CDIs constitutes providing a 'custodial or depository service' within the meaning of s766A(e) of the Corporations Act (not 'dealing' within the meaning of s766C of the Corporations Act).

RG 253.53 However, we recognise that there are differing views in the market as to whether the depository nominee or the foreign company issues CDIs and, as a result, whether the foreign company is required to hold an AFS licence for a financial service that constitutes 'dealing' in CDIs.

RG 253.54 If, contrary to the view in RG 253.50, the view is taken that CDIs are issued by the depository nominee and the CDIs are the depository nominee's securities, then:

- (a) the depository nominee would be able to rely on the self-dealing exemption in s766C(4) of the Corporations Act for an issue of CDIs; and
- (b) the view might be taken that the foreign company needs an AFS licence for arranging for:
  - (i) the depository nominee to deal in CDIs over its underlying foreign securities (i.e. by issuing CDIs over the securities); or
  - (ii) a CDI holder (or prospective CDI holder) to deal in CDIs over its underlying foreign securities (i.e. by acquiring or disposing of CDIs over its securities).

Note: This is because the foreign company plays an extensive role in relation to the issue of CDIs, the conversion of CDIs to the underlying shares (and vice versa) and other obligations in relation to CDIs: see Section 13 of the ASX Settlement Operating Rules. As such, the foreign company's role in relation to CDIs may constitute 'arranging' for others (e.g. the depository nominee or CDI holders) to deal in CDIs: s766C.

RG 253.55 Given the uncertainty in the market about who issues CDIs and whether CDIs are the depository nominee's or the foreign company's securities, our class order provides licensing relief for a foreign company (other than a foreign investment company covered by s766C(5)) that issues the foreign securities underlying the CDIs for arranging for others to deal in CDIs over its underlying foreign securities.

### What other relief is provided?

RG 253.56 [CO 14/827] also gives relief to ensure that Ch 6D operates effectively for offers of CDIs over underlying foreign securities. This relief is necessary because the application of the provisions in Ch 6D to offers of CDIs may lead to unintended consequences.

RG 253.57 For example, references in Ch 6D (and legislative instruments made under s741) to compliance with the financial reporting provisions in Ch 2M, are to be read as references to s601CK (where s601CK applies to the foreign company) or, otherwise, the financial reporting laws of the kind set out in Chapter 2M applicable to the foreign company in its place of origin. Section 601CK requires registered foreign companies to lodge financial statements with ASIC, prepared in accordance with the law in its country of origin.

Note: Section 601CK applies to foreign companies registered under Pt 5B.2 of the Corporations Act. Section 601CK may not apply to a foreign company whose place of origin is a country prescribed by regulations made for the purposes of s601CDA. Foreign companies that have CDIs issued over classes of shares described as ETFs will need to consider how the lodgement requirements in s601CK apply to their particular circumstances: see Regulatory Guide 58 *Reporting requirements: Registered foreign companies and companies with foreign shareholders*.

RG 253.58 In addition, references to orders under s340 or 341 are to be read as references to declarations under s601CK(7) or exemptions (however described) under the financial reporting laws in the foreign company's place of origin. The affected provisions include:

- (a) the rights issue exception in s708AA;
- (b) the cleansing notice provisions in s708A; and
- (c) the special prospectus rules for continuously quoted securities in s713.

RG 253.59 In addition, [CO 14/827] gives relief so that a foreign company with CDIs issued over all or some of its underlying foreign securities is able to rely on s708AA for rights issues and on 708(13) for dividend reinvestment plans and bonus share plans. It does this by treating the holder of the CDIs (and not CDN) as the holder of the underlying foreign securities.

Note: The relief in [CO 14/827] is important when determining the entitlements of each CDI holder and holder of the underlying foreign securities, particularly where each CDI represents a multiple or fraction of the underlying foreign security and entitlements are calculated at the foreign security level rather than at the CDI level.

## What information is required to be disclosed?

- RG 253.60 Our relief in [CO 14/827] requires a foreign company to explain the differences between holding CDIs and holding the underlying foreign securities in any Ch 6D disclosure document for an offer to issue CDIs over foreign securities. This information is required to be disclosed under the requirements in Ch 6D of the Corporations Act: see Section C.

## Individual relief

- RG 253.61 We will consider granting individual relief to facilitate:
- (a) offers of CDIs over underlying foreign securities that are, or are proposed to be, quoted on a financial market other than one of the approved financial markets;
  - (b) the use of a depository nominee, other than CDN, where the depository nominee is an AFS licence holder and is governed by market rules that provide adequate protections to CDI holders; and
  - (c) offers of CDIs that do not fall within our class order relief (e.g. offers of CDIs over interests in foreign managed investment schemes).

## Other financial markets

- RG 253.62 Our relief in [CO 14/827] extends to CDIs over underlying foreign securities that are, or are proposed to be, quoted on one of the approved financial markets specified in the class order (i.e. ASX, NSXA, APX or SIM VSE).
- RG 253.63 We will consider granting individual relief to facilitate offers of CDIs on other financial markets where we are satisfied that the ASX Settlement Operating Rules, together with the listing rules and other rules of those financial markets, provide a sufficiently robust market framework for the trading and settlement of CDIs on those markets by:
- (a) setting out the obligations and responsibilities of the depository nominee and the foreign company; and
  - (b) providing for the protection of the rights and entitlements of CDI holders.

## Other depository nominees

- RG 253.64 CDN is the only depository nominee that has, to date, been appointed in relation to CDIs over foreign securities. However, a foreign company may appoint another depository nominee. For this reason, we will consider granting individual relief to facilitate the use of a depository nominee other than CDN.

- RG 253.65 In deciding whether to grant relief, we will consider the extent to which the proposed depository nominee is governed by the ASX Settlement Operating Rules, or other market rules that:
- (a) impose equivalent obligations and responsibilities on the depository nominee (e.g. obligations relating to voting in accordance with the instructions of CDI holders and prohibitions on accepting a takeover bid without instructions from the CDI holders); and
  - (b) provide equivalent protections of the rights and entitlements of CDI holders.

Note: Section 13 of the ASX Settlement Operating Rules sets out the rules governing CDIs, including the obligations and responsibilities of the depository nominee: see, specifically, Rules 13.1–13.13.

- RG 253.66 Any proposed depository nominee must be the holder of an AFS licence, which authorises the depository nominee to provide custodial or depository services to wholesale and retail clients.

### Other types of offers

- RG 253.67 We will consider granting individual relief where there is doubt as to whether a particular offer of CDIs falls within our class order relief. For example:
- (a) offers for issue of CDIs in a rights issue that does not strictly fall within our modified definition in s9A of the Corporations Act; or
  - (b) offers for issue or sale of CDIs under a reconstruction.

Note: See Regulatory Guide 188 *Disclosure in reconstructions* (RG 188) and Class Order [CO 07/10] *Technical disclosure relief for reconstructions and capital reductions* for further guidance on the nature of disclosure relief we have given in the context of reconstructions.

- RG 253.68 We will also consider granting individual relief to facilitate offers of CDIs over interests in foreign managed investment schemes.

Note: CDIs over interests in foreign managed investment schemes are not currently being used in the market and, as a result, the relief in [CO 02/311] for interests in foreign managed investment schemes has been revoked on the basis that it is not necessary. However, we have provided individual relief to CDN, for the avoidance of doubt, in substantially the same form as the relief in [CO 02/311], so that CDN is not required to give disclosure under Pt 7.9 of the Corporations Act for offers of CDIs over interests in foreign managed investment schemes.

## C Disclosure to investors about CDIs

### Key points

Class Order [CO 14/827] requires a foreign company to explain the differences between holding CDIs and holding the underlying foreign securities in any Ch 6D disclosure document used for an offer to issue CDIs over foreign securities.

In this section, we provide guidance to assist foreign companies to comply with this requirement of our class order relief, and to provide effective disclosure for offers of CDIs and other communications with CDI holders.

### Why disclosure about CDIs is important

- RG 253.69 Disclosure of the key differences between holding CDIs and holding the underlying foreign securities is important because although holders of CDIs generally have the same rights and entitlements as holders of the underlying foreign securities, there may be some minor differences.
- RG 253.70 In relation to corporate actions, such as rights issues and capital reductions, CDI holders will generally receive equal treatment to that of holders of the underlying foreign securities. For example, Rules 13.1–13.13 of the ASX Settlement Operating Rules require the foreign company to ensure that all economic benefits (including dividends, the right to vote, and the right to participate in rights issues or other corporate actions) flow through to CDI holders as if they were the holders of the underlying foreign securities.
- RG 253.71 However, in some cases, minor differences may exist between the entitlements of CDI holders and the entitlements they would have accrued if they held the underlying foreign securities directly. These differences exist where:
- (a) the depository nominee's holding of the underlying foreign securities is treated as a single holding rather than as a number of smaller separate holdings corresponding to the individual interests of CDI holders; or
  - (b) CDIs are issued on a conversion ratio where each CDI represents a multiple or a fraction of the underlying foreign security and entitlements are calculated at the foreign security level rather than the CDI level.

Note: CDIs are usually structured so that the conversion ratio of CDIs to the underlying foreign securities is one-to-one. However, CDIs may be (and, less frequently, are) issued using a ratio where each CDI represents a multiple or fraction of the underlying foreign security.

RG 253.72 In these circumstances, CDI holders will not benefit to the same extent from the rounding-up of fractional entitlements in a rights issue, consolidation or reorganisation of capital, or other corporate actions (i.e. their entitlements will be less than if they held the underlying foreign securities directly).

Note: The ASX Settlement Operating Rules require foreign companies to minimise these differences where legally permissible.

## What information should be disclosed?

### Chapter 6D disclosure documents

RG 253.73 The fundraising provisions in the Corporations Act are intended to ensure that investors can make informed investment decisions on the basis of a disclosure document containing all information required to be disclosed under Ch 6D.

Note: A prospectus for an offer of securities must include the information that is required under the general disclosure test (s710) and the specific disclosure requirements (s711) and must be worded in a 'clear, concise and effective' manner: s715A. The content requirements for transaction-specific prospectuses and offer information statements are contained in s713 and 715, respectively.

RG 253.74 The relief in [CO 14/827] requires a foreign company to explain the differences between holding CDIs and holding the underlying foreign securities in any Ch 6D disclosure document (e.g. a prospectus, a transaction-specific prospectus or an offer information statement) for an offer to issue CDIs over underlying foreign securities.

RG 253.75 Information about the key differences between holding CDIs and holding the underlying foreign securities is information that:

- (a) investors would reasonably require to make an informed assessment of the rights and liabilities attaching to the CDIs being offered and is, therefore, information that is required to be disclosed in a prospectus (s710), including a transaction-specific prospectus (s713(2)); and
- (b) is relevant to the nature of the securities being offered and is, therefore, information that is required to be disclosed in an offer information statement (s715(1)(a)).

RG 253.76 We consider information about the differences between holding CDIs and holding the underlying foreign securities is information that is required to be disclosed under Ch 6D. We have included a requirement to this effect in our class order relief to avoid any doubt that the disclosure tests in s710, 713 and 715 of the Corporations Act must be satisfied for CDIs (and not just the underlying foreign securities), and to ensure that all material and relevant information is provided to retail investors.

Note 1: [CO 14/827] treats an offer for the issue of CDIs as an offer for the issue of the underlying foreign securities (to enable an offer of CDIs to be regulated in the same way as an offer of the underlying foreign securities). However, we still consider it appropriate for the disclosure requirements in Ch 6D to be satisfied in relation to CDIs.

Note 2: Foreign companies will also need to consider how to explain the rights and liabilities attaching to the underlying foreign securities in any Ch 6D disclosure document for an offer of CDIs. Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228) sets out our broader guidance about how to prepare prospectuses that satisfy the content requirements in s710. In particular, RG 228 gives guidance to foreign companies on providing disclosure about how the differences in the laws in the foreign jurisdiction and Australia may affect investor rights: see RG 228.73(d).

RG 253.77 Table 2 sets out what we consider to be the key differences between holding CDIs and holding the underlying foreign securities, and what information we would generally expect to be disclosed in any Ch 6D disclosure documents. Disclosure of the key differences will depend on whether the underlying foreign security is a share (or interest in a share) or an option to acquire shares.

**Table 2: Information about the key differences between holding CDIs and holding the underlying foreign securities**

Topic	What information to include
Nature of CDIs	Explain what a CDI is—that is, a unit of beneficial ownership in a share (or beneficial interest in a share) or option of a foreign company, where the underlying share, interest or option is registered in the name of a depository nominee, for the purpose of enabling the foreign share, interest or option to be traded on the relevant financial market.
Specific features of CDIs	<p>Explain any specific features of the CDI and the impact that these features have on the rights and entitlements of CDI holders.</p> <p>For example, where the conversion ratio of CDIs to the underlying foreign securities is not one-to-one and entitlements are calculated at the foreign security level rather than at the CDI level, CDI holders will not benefit to the same extent from the rounding-up of fractional entitlements in a rights issue or other corporate action (i.e. their entitlements will be less than what they would have been if they held the underlying foreign securities directly).</p>
Identity and role of the depository nominee	<p>Explain what a depository nominee does (i.e. the depository nominee holds title to the foreign securities on behalf of CDI holders). Where more complex depository nominee arrangements are used (e.g. where there are two depository nominees—an Australia depository nominee and a foreign depository nominee—resulting in two tiers of beneficial ownership), use a diagram to illustrate the ownership arrangements.</p> <p>Identify who has been appointed as depository nominee (including their AFS licence number and authorisation details). Specify whether they are an approved general participant of ASX Settlement.</p> <p>Disclose what fees (if any) the depository nominee receives for acting as the depository for the CDIs.</p>
How to convert CDIs into shares	Explain the process and provide instructions on how CDI holders may convert their CDIs into the underlying foreign securities (i.e. through the foreign company's share registry or their broker, as applicable). Include contact details for the foreign company's share registry.

Topic	What information to include
Voting rights	<p>Explain how CDI holders may exercise voting rights (i.e. by directing the depository nominee to cast, or authorise or arrange the casting of, proxy votes in accordance with the written directions of the CDI holder only).</p> <p>Explain that, unless the laws of the jurisdiction in which the foreign issuer is established permit it, CDI holders cannot vote personally and that if a CDI holder wishes to vote personally they must first convert their CDIs into the underlying shares.</p>
Dividends or other distributions	<p>Explain the entitlements of CDI holders to dividends and other capital distributions. In particular, explanation should be provided of the distribution amount per CDI and the AUD equivalent as at the ex-dividend date (particularly where the ratio of CDIs to the underlying shares is not one-to-one).</p>
Corporate actions	<p>Explain that for corporate actions (including rights issues, bonus issues and reorganisations of capital) CDI holders will generally receive equal entitlements to that of holders of the underlying foreign securities.</p> <p>Explain whether marginal differences may exist between the resulting entitlements of CDI holders and the entitlements they would have accrued if they held the underlying foreign securities directly. For example, where the ratio of CDIs to foreign securities is not one-to-one and entitlements are calculated at the foreign security level rather than at the CDI level, explain that CDI holders will not benefit to the same extent from the rounding-up of fractional entitlements (i.e. their entitlements will be less than that what they would have been if they had held the underlying securities directly).</p>
Takeovers	<p>Explain that the depository nominee may only accept a takeover offer where CDI holders instruct it to do so, and that the depository nominee must ensure that the offeror processes the takeover acceptance.</p>

- RG 253.78 Foreign companies should consider how they can word and present information about CDIs in their Ch 6D disclosure documents in a ‘clear, concise and effective’ manner.

Note: RG 228 provide guidance on how to word prospectuses and other Ch 6D disclosure documents in a ‘clear, concise and effective’ manner.

- RG 253.79 When we review a disclosure document for an offer of CDIs lodged with ASIC under Ch 6D of the Corporations Act, we will review the disclosure in accordance with our guidance in Table 2 of this guide.

### Other offer documents

- RG 253.80 For other ‘prospectus-like’ offer documents (e.g. offer documents for rights issues, employee incentive schemes or share purchase plans), we encourage foreign companies to consider what level of information about the differences between holding CDIs and holding the underlying foreign securities—having regard to our guidance in Table 2—their CDI holders may reasonably require to understand the impact of a particular offer on their rights or entitlements, and whether to participate in the particular offer.

RG 253.81 For example, investors may find it useful if an offer document for a rights issue explains that CDI holders will not benefit to the same extent from the rounding-up of fractional entitlements where the ratio of CDIs to foreign securities is not one-to-one—and where entitlements are calculated at the foreign security level rather than at the CDI level (i.e. their entitlements will be less than what they would have been if they had held the underlying foreign securities directly).

### **Other company communications**

RG 253.82 For other types of company communications with CDI holders, including market announcements (e.g. dividend or other corporate action announcements), notices of meeting and communications on the foreign company's website, we encourage foreign companies to consider what level of information about the differences between holding CDIs and holding the underlying foreign securities—having regard to our guidance in Table 2—their CDI holders may reasonably require to understand the impact of a particular corporate action or transaction on their rights or entitlements. For example, investors may find an explanation of the following information useful:

- (a) the dividend amount per CDI and the AUD equivalent as at the ex-dividend date (particularly where the ratio of CDIs to the underlying foreign securities is not one-to-one) in a dividend announcement; and
- (b) how CDI holders may exercise voting rights in a notice of meeting (i.e. by directing the depository nominee to cast, or authorise or arrange the casting of, proxy votes in accordance with the written directions of the CDI holder only).

## **How to provide effective disclosure about CDIs**

RG 253.83 Disclosure about the key differences between holding CDIs and holding the underlying foreign securities should not mean that Ch 6D disclosure documents, other offer documents or company communications (e.g. market announcements) become unnecessarily lengthy or difficult for investors to read and understand.

RG 253.84 Any explanation of the key differences between CDIs and the underlying foreign securities should be tailored to the specific offer, corporate action or transaction, rather than being general in nature. This is particularly important where the ratio of CDIs to the underlying securities is not one-to-one.

RG 253.85 In addition to including more specific and tailored information about CDIs in a Ch 6D disclosure document, offer document or company communication, foreign companies may provide a reference or link to a document where

relevant information about CDIs can be readily accessed without charge (e.g. on the company's website).

Note 1: CDN's *Understanding CHESD Depository Interests* and GN 5 provide useful information for CDI holders on the differences between holding CDIs and holding the underlying financial product. We encourage foreign companies to provide a reference or link to these documents in their Ch 6D disclosure documents, other offer documents, cleansing notices provided to the market (under s708AA and 708A) and in their communications with CDI holders.

Note 2: Our [MoneySmart website](#) also contains useful information for CDI holders about CDIs and the differences between holding CDIs and holding the underlying foreign securities.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act.
approved financial markets	ASX, NSXA, APX and SIM VSE
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the financial market operated by ASX Limited
ASX Settlement Operating Rules	The operating rules of ASX Settlement
ASX Settlement	ASX Settlement Pty Limited (formerly known as ASX Settlement and Transfer Corporation Pty Limited)
APX	Asia Pacific Exchange Limited or the financial market operated by Asia Pacific Exchange Limited
AQUA rules	The rules contained in Schedule 10A of the ASX Operating Rules, which describe and set out specifications for AQUA products and the trading of those products on ASX
CDI (CHESS Depository Interest)	A unit of beneficial ownership in a financial product of a foreign body, where the underlying financial product is registered in the name of a depository nominee for the purpose of enabling the foreign financial product to be traded on ASX
CDN (CHESS Depository Nominees Pty Limited)	A wholly-owned subsidiary of ASX Limited, that was created to fulfil the functions of a depository nominee
CHESS	Clearing House Electronic Subregister System
Chi-X	Chi-X Australia Pty Ltd or the financial market operated by Chi-X Australia Pty Ltd
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 14/827] (for example)	An ASIC class order (in this example numbered CO 14/827)

Term	Meaning in this document
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of the Act
Corporations Regulations	Corporations Regulations 2001
CUFS (CHESS units of foreign securities)	Depository interests which are issued in respect of foreign equity securities
depository interest	Depository interests which are issued in respect of foreign equity securities and where the securities are held in another settlement and depository system
depository nominee	An entity to whom the underlying securities of a foreign company are issued or transferred for the purpose of facilitating the issue of CDIs in accordance with the operating rules of a prescribed clearing and settlement facility
disclosure document	A prospectus, profile statement or offer information statement
ETF	Exchange traded fund
foreign company	As defined in s9 of the Corporations Act
issuer	As defined in s761E(4) of the Corporations Act
NSXA	National Stock Exchange of Australia Limited or the financial market operated by National Stock Exchange of Australia Limited
offeror	Any entity making an offer of securities under Ch 6D of the Corporations Act, including any entity issuing or transferring securities under Ch 6D.  Note: Offering securities includes inviting applications for the issue of securities and inviting offers to purchase the securities: s700(2).
PDS	Product Disclosure Statement
Product Disclosure Statement	A document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act  Note: See s761A of the Corporations Act for the exact definition.
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified
SIM VSE	SIM Venture Securities Exchange or the financial market operated by SIM Venture Securities Exchange Ltd
s708 (for example)	A section of the Corporations Act (in this example numbered 708), unless otherwise specified
underlying foreign securities	Shares of a foreign company, beneficial interests in shares of a foreign company and options to acquire, by way of issue, shares of a foreign company

## Related information

### Headnotes

AFS licence, APX, ASX, ASX settlement operating rules, CHESSE depository interests, CDIs, CHESSE depository nominees, CDN, CHESSE units of foreign securities, CUFS, cleansing notice, depository interests, depository nominee, derivatives, disclosure, disclosure document, exchange traded funds, financial products, foreign company, foreign securities, issuer, licensing, NSXA, offeror, prospectus, securities, SIM VSE, warrants

### Class orders

[CO 02/311] *CHESSE Depository Nominees Pty Ltd – CDIs*

[CO 02/312] *Part 7.11, Division 4 financial products for ASTC*

[CO 03/184] *Employee share schemes*

[CO 04/671] *Disclosure for on-sale of securities and other financial products*

[CO 05/26] *Constitutional provisions about the consideration to acquire interests*

[CO 07/9] *Prospectus relief for foreign schemes of arrangement and PDS relief for Pt 5.1 schemes and foreign schemes of arrangement*

[CO 07/10] *Technical disclosure relief for reconstructions and capital reductions*

[SCO 09/27] *Variation of Class Orders [CO 02/312] and [CO 05/26]*

[CO 09/68] *Prospectus and PDS relief for foreign scrip takeovers*

[CO 09/425] *Share and interest purchase plans*

[CO 14/827] *Disclosure relief for offers of CHESSE Depository Interests*

[CO 14/829] *Variation of Class Order [CO 02/312]*

### Regulatory Guides

RG 173 *Disclosure for on-sale of securities and other financial products*

RG 188 *Disclosure in reconstructions*

RG 228 *Prospectuses: Effective disclosure for retail investors*

## **Legislation**

Corporations Act, Chs 6D, 7, Pts 7.6, 7.9, s601CK, 700, 707, 708, 708AA, 708A, 741(1), 761A, 761E, 766A, 766C

## **Consultation papers and reports**

*CP 220 Fundraising: Facilitating offers of CHESSE Depository Interests*

*REP 282 Regulation of exchange traded funds*

*REP 414 Response to submissions on CP 220 Fundraising: Facilitating offers of CHESSE Depository Interests*

## **Other documents**

ASX Guidance Note 5 *CHESSE Depository Interests (CDIs)*

ASX Settlement Operating Rules

CDN, *Understanding CHESSE Depository Interests*, CHESSE Depository Nominees Pty Ltd, financial services guide, 2012