

# Attachment 7 to CP 225: Draft regulatory guide



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 72

# Foreign securities: Disclosure relief ~~Foreign securities prospectus relief~~

December 2014

### **About this guide**

This is a guide for foreign [entities/companies](#) and their advisers involved in the offer of foreign securities to Australian investors.

This guide outlines the relief we have given from [the prospectus provisions in Chs 6D and 7](#) of the *Corporations Act 2001* (Corporations Act) for offers of foreign securities [and interests](#).

### 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 draft version was issued on 11 December 2014 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 72, issued 3 July 2007, reissued 18 June 2009
- Superseded Policy Statement 72A, issued 15 January 1997, updated 4 August 1997
- Superseded Policy Statement 72, issued 6 December 1993, updated 23 January 1995 and 12 February 1996

### 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

In general, foreign companies-entities that offer securities in Australia need to comply with the prospectus provisions in Chs 6D or 7: see RG 72.1.

We have granted relief from these provisions in certain circumstances, in particular where the cost of compliance would be disproportionate to the regulatory benefit: see RG 72.3–RG 72.4.

### Relief from the disclosure Chapter 6D prospectus provisions

- RG 72.1 ~~A fundamental principle of t~~The Corporations Act ~~requires~~ is that a prospectus or Product Disclosure Statement (PDS) must accompany for an offer of securities received in Australia (unless an exemption applies). This requirement applies regardless of the place of incorporation of the offeror.
- RG 72.2 ~~However, w~~We consider that relief from the requirement to prepare an Australian prospectus or PDS may be appropriate where:
- (a) a foreign offeror has complied with a disclosure regime offering similar levels of investor protection to the Australian prospectus-disclosure requirements; or
  - (b) very few offers are made to Australians.

### Relief for offers of foreign securities

- RG 72.3 We have granted conditional ~~class-order~~ relief ~~from the prospectus provisions in Ch 6D~~ for:
- (a) rights issues by foreign companies where the securities are in the same class as those already held by Australian investors (see Section B);
  - (b) foreign takeovers and schemes of arrangement (see Section C); and
  - (c) foreign companies-entities making 20 or fewer offers in Australia in 12 months (see Section D);<sup>5</sup>
- RG 72.4 ~~We have also given:~~
- ~~relief for the advertising and publicity of foreign offers to Australians (see Section E); and~~
- ~~(a) other relief for offers of securities by foreign companies (see Section F).~~

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RG 72.4 Much of the relief referred to in this guide applies where the relevant foreign securities are quoted on an ‘approved foreign market’. Section G sets out a list of approved foreign markets for the purposes of the relief as well as criteria for approving a market as an approved foreign market.

### **Rationale for relief**

RG 72.5 Prospectus-Disclosure relief for offers of foreign securities enables Australian ~~shareholders-investors~~ to participate in offers ~~of securities~~ that might not otherwise be extended to them because of the time and expense involved in complying with the regulatory requirements of multiple jurisdictions.

RG 72.6 We have ~~also~~ granted relief for rights issues by foreign companies and scrip offers ~~of securities~~ under foreign takeovers and schemes of arrangement because, once a person acquires shares-an interest in a foreign ~~entity~~company, they accept that foreign law largely governs their relationship with the ~~company~~entity. Given the potential disadvantage to Australian ~~shareholders-investors~~ if they are excluded from such transactions, we think it is appropriate to grant relief provided that suitable investor protection measures are in place.

### **Other relief that may be relevant for foreign offers**

RG 72.7 Section F sets out other regulatory guidance and relief we have given that may be relevant for offers of foreign securities. This includes relief for foreign collective investment schemes and employee incentive schemes.

RG 72.8 We have also given relief from the advertising restrictions for advertisements and other notices that are aimed at foreign markets and only incidentally published in Australia: see Section E.

## B Rights issues relief

### Key points

We have given conditional ~~class order~~ relief from the prospectus provisions for a foreign company to issue securities in the same class as those already held by Australian investors: see RG 72.9–RG 72.10.

We may also grant case-by-case relief for foreign companies to issue securities in a different class: see RG 72.13.

### Rights issues of foreign securities—Same class of securities

~~RG 72.7~~ RG 72.9 Class Order [CO 00/183] The draft ASIC Corporations (Foreign Securities—Rights Issues) Instrument 2015 gives relief from Pts 6D.2 and 6D.3 to foreign companies conducting renounceable or non-renounceable rights issues of securities of the same class as those held by their Australian shareholders. ~~The relief is from Divs 3, 4 and 5 of Part 6D.2 (other than s718) and from s728(1)(b)–(c), 728(3)(b), 730(1)(b)–(c), 734 and 735. The instrument also exempts shortfall offers—these are offers of the securities that were not taken up under the rights issue and which are offered to holders within two months.~~

~~RG 72.8~~ RG 72.10 Relief under the draft ASIC Corporations (Foreign Securities—Rights Issues) Instrument 2015 [CO 00/183] is subject to the following conditions:

- (a) the rights issue must be a pro rata offer, although fractional entitlements may either be rounded up or down;
- ~~(b)~~ (b) the terms and conditions of the offers made to Australian ~~shareholders~~ offerees must be no less favourable than those made to other offerees in the same class;
- ~~(c)~~ (c) the securities must have been quoted on an approved foreign market at all times in the three months before the offer, and must not have been suspended from trading on that market for more than five trading days;

Note: See RG 72.47 for a list of approved foreign markets.

- ~~(b)(d)~~ (d) the aggregate offer price of the securities offered to Australian shareholders must be not more than 10% of the aggregate offer price of all the securities offered the number of securities offered to Australian residents must be no more than 10% of the number of securities offered to all offerees;
- ~~(e)~~ (e) Australian offerees must be given disclosure for the offer at or before the offer is made. The disclosure must be in English (if available) or a

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- version of the document that is given or made available to offerees in the primary foreign jurisdiction; and
- ~~(c) the foreign company must provide Australian shareholders with the same disclosure documents as other offerees (or, if applicable, an English translation);~~
  - ~~(d) the securities must have been quoted on an approved foreign market throughout the 36-month period preceding the offer, and must not have been suspended from trading on that market for more than five trading days;~~
  - ~~(e) Note: See RG 72.47 for a list of approved foreign markets.~~
  - (f) the foreign company must take reasonable steps to ensure the offer is made in accordance with foreign regulatory requirements in the primary foreign jurisdiction, comply with all operating rules of the approved foreign market and the legislative requirements of the home jurisdiction; and

Note: 'Primary foreign jurisdiction' means the place of the approved foreign market on which the securities in the offer class are quoted or, if the securities in the offer class are quoted on more than one approved foreign market, the place of the approved foreign market where it is reasonably expected the largest numbers of offers will be received.

~~RG 72.11 the foreign company must provide a copy of the disclosure document to ASIC within seven days of making an offer to Australian shareholders. At the same time, it must also give ASIC a statement specifying the number of Australian offerees, their addresses and the percentage of share capital held by Australian offerees. Whether securities are held by Australian residents for the purposes of the 10% limit will be determined by reference to:~~

- ~~(a) the address of the beneficial owner (as included in publicly available reports that have been given to a relevant regulator or market operator of the approved foreign market); or~~
- ~~(b) the address of the registered holder (if the address of the beneficial owner is not included in publicly available reports or known to the foreign company).~~

### **On-sale relief**

~~RG 72.12 Section 707 restricts the on-sale of securities issued without disclosure within 12 months of their issue. Draft ASIC Corporations (Foreign Securities—Rights Issues) Instrument 2015 gives relief from this restriction so that securities issued under the rights issue can be freely on-sold.~~

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## Rights issues—Different class of securities

~~RG 72.9~~[RG 72.13](#) We may ~~also~~ grant case-by-case relief for a foreign company to issue securities in a different class to those already held by Australian investors on similar conditions to those in [draft ASIC Corporations \(Foreign Securities—Rights Issues\) Instrument 2015\[CO-00/183\]](#). Applications should address the criteria set out in Regulatory Guide 51 *Applications for relief* (RG 51).

## Rationale for granting relief for rights issues

~~RG 72.40~~[RG 72.14](#) The requirement for an Australian prospectus may discourage a foreign company with a small percentage of Australian shareholders from extending a rights issue to those shareholders. This may result in a dilution of those shareholders' interests.

~~RG 72.41~~[RG 72.15](#) When a person acquires shares in a foreign company, they must accept that foreign law will largely govern the relationship with the company. Provided that suitable safeguards are in place, we consider that it is appropriate to modify the Australian prospectus provisions to reflect this.

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## C Foreign takeovers and schemes of arrangement

### Key points

In ~~[CO 09/68]~~the draft ASIC Corporations (Foreign Securities—Foreign Scrip Bids) Instrument 2015, we have given conditional prospectus and PDS relief for ~~securities scrip~~ offered as consideration under foreign regulated takeovers where Australian residents hold no more than 10% of the bid class securities: see RG 72.16–RG 72.20.

In ~~[CO 07/9]~~the draft ASIC Corporations (Disclosure Relief—Compromises or Arrangements) Instrument 2015, we have given conditional prospectus and PDS relief where securities are offered under foreign schemes of arrangement in certain foreign jurisdictions: see RG 72.21–RG 72.22.

~~We have also given conditional procedural relief in [CO 00/185] for offers of securities in connection with a foreign takeover or scheme of arrangement: see 0–RG 72.24.~~

We have given licensing relief in Class Order [CO 03/606] *Financial product advice—exempt documents* for general advice contained in documents required under takeovers or schemes of arrangement that are regulated in certain foreign jurisdictions: see RG 72.24–RG 72.26.

### Substantive relief for foreign scrip takeovers

#### Disclosure relief

~~RG 72.12~~RG 72.16 A foreign scrip takeover is a foreign regulated takeover where scrip forms all or part of the consideration being offered for securities in the bid class. Without relief, an offer of scrip to Australian holders under a foreign scrip takeover may require a prospectus or a ~~Product Disclosure Statement~~ (PDS).

~~RG 72.13~~RG 72.17 ~~Class Order [CO 09/68] *Prospectus and PDS relief for*~~The draft ASIC Corporations (Foreign Securities—~~f~~Foreign ~~s~~Scrip ~~takeovers~~Bids) Instrument 2015 gives relief from the prospectus and PDS provisions in ~~Parts~~ 6D.2 and 6D.3 and s1012A, 1012B and 1012C for offers of securities or interests in managed investment schemes under foreign scrip takeovers where:

- (a) Australian residents hold no more than 10% of the bid class securities or interests (determined at a time, fixed by the bidder, in the 30-day period before offers are first made under the takeover);
- (b) the bid class securities or interests are quoted on an approved foreign market and the takeover is regulated ~~in the jurisdiction of an approved foreign market~~by the law or other rules that apply in that jurisdiction;

Note: The scrip offered as consideration for the acquisition of bid class securities or interests does not have to be in a class that is quoted on an approved foreign market.

- (c) if foreign regulatory requirements require disclosure, Australian offerees are given an English version of the disclosure (if available) or a version of the document given to offerees in the eligible foreign country;

Note: 'Eligible foreign country' means the jurisdiction where the relevant approved foreign market is located, for a bid document provided to foreign offerees.;

- ~~(i) an English version of the bid document; or~~
- ~~(ii) if no English version of the bid document is available, the bid document in the language typically used by the target to communicate with holders of bid class securities or interests;~~
- ~~(iii) is given or made available to Australian offerees;~~
- ~~(d)~~ the offer made to Australian offerees is on terms that are at least as favourable as offers that are made to foreign offerees; and
- ~~(e)~~ the person relying on the relief takes all reasonable steps to ensure that the foreign scrip takeover ~~is carried out in accordance with~~ complies with the relevant foreign regulatory requirements.

Note: ~~Where an Australian~~ financial services (AFS) licensee who is not an associate of the bidder wishes to rely on relief from s1012A, ~~the requirement in paragraph (e) is replaced with a requirement that~~ the licensee must have no reason to suspect that the foreign scrip takeover is not made in accordance with the relevant foreign regulatory requirements.

~~RG 72.14~~ RG 72.18 Whether securities are held by Australian residents for the purposes of RG 72.17(a) ~~RG 72.14(a)~~ will be determined by reference to:

- (a) the address of the beneficial owner of the securities where this is revealed by:
- (i) reports of beneficial ownership in the jurisdiction of incorporation of the target or in the jurisdiction of an approved foreign market on which the securities are quoted, where the reports:
- (A) are publicly available; and
- (B) have been lodged with the regulator or market operator in the relevant jurisdiction; or
- (ii) information otherwise known to the bidder or a related body corporate; or
- (b) where the address of the beneficial owner is not included in such publicly available reports or otherwise known to the bidder or its related bodies corporate, the address recorded in the register of members of the target in respect of the securities.

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## Rationale for providing substantive disclosure relief

~~RG 72.15~~ RG 72.19 The requirement to prepare an Australian prospectus or PDS may deter a bidder from offering securities to Australian members of a target as an alternative to cash consideration. This means that Australian members may be deprived of the ability to receive their consideration in the form of securities.

~~RG 72.16~~ RG 72.20 For reasons of international comity, Australian regulatory requirements should not impose excessive costs or obstacles on foreign business transactions unless there is a clear need for Australian investor protection. The requirement to prepare a prospectus or PDS imposes substantial costs on what is primarily a foreign business transaction. These costs are not justified when the transaction is subject to comparable regulation in another jurisdiction, and only a small proportion of the target securities are held by Australian investors. The Australian investors have accepted the jurisdiction of foreign law by investing on a foreign market.

### On-sale relief

~~RG 72.17~~ — ~~Without on-sale relief, a person who received securities or interests in the circumstances described in s707(3) or 1012C(6) under a foreign scrip takeover would not be able to sell those securities or interests in Australia within 12 months of receiving them unless the person provided a prospectus or PDS or an exemption from the on-sale provisions applied.~~

~~RG 72.18~~ — ~~We have therefore provided relief from the on-sale disclosure requirements in s707(3) and 1012C(6) for securities and interests that were issued without disclosure in reliance on [CO 09/68]: see Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products.*~~

## Substantive relief for foreign schemes of arrangement

~~RG 72.19~~ RG 72.21 ~~Class Order [CO 07/9] *Prospectus relief for foreign schemes of arrangement and PDS relief for Part 5.1 schemes and foreign schemes of arrangement*~~ The draft ASIC Corporations (Disclosure Relief—Compromises or Arrangements) Instrument 2015 gives substantive relief from the requirement to prepare a prospectus or PDS for offers of securities made under a foreign scheme of arrangement that is regulated in a similar manner to Part 5.1. For more information about this relief, see Regulatory Guide 188 *Disclosure in reconstructions* (RG 188).

RG 72.22 The jurisdictions covered by the relief are Hong Kong, Malaysia, New Zealand, Singapore, South Africa and the United Kingdom. RG 188 also discusses circumstances where we may grant case-by-case relief for a scheme of arrangement in other foreign jurisdictions.

## On-sale relief

RG 72.23 Entities that issue securities without disclosure in reliance on the draft ASIC Corporations (Foreign Securities—Foreign Scrip Bids) Instrument 2015 or the draft ASIC Corporations (Disclosure Relief—Compromises or Arrangements) Instrument 2015 can also rely on the relief in those instruments from the on-sale restrictions in s707(3) and 1012C(6).

## Procedural relief for foreign scrip takeovers and schemes of arrangement

RG 72.20 ~~In addition to the substantive relief in [CO 09/68] and [CO 07/9], Class Order [CO 00/185] *Foreign securities* provides limited procedural relief for an offer of securities in connection with a foreign takeover bid or scheme of arrangement. For example, [CO 00/185] gives relief from the requirement for application money received from people applying for securities to be held on trust: s722. The relief under [CO 00/185] applies in a broader range of circumstances than the substantive relief under [CO 09/68] and [CO 07/9].~~

RG 72.21 ~~Under [CO 00/185], a foreign company undertaking a takeover bid or scheme of arrangement does not have to comply with various technical requirements of Ch 6D if:~~

- ~~(a) the securities being offered are quoted, or are reasonably expected to soon be quoted, on an approved foreign market;~~
- ~~(b) the terms and conditions offered to Australian shareholders are the same as those being offered to other offerees in the same class;~~
- ~~(c) Australian shareholders are provided with the same offer documents as all other offerees, modified to include any additional information needed to comply with Ch 6D, and translated into English if necessary; and~~
- ~~(d) the offer complies with all legislative requirements of the offeror's home jurisdiction and the operating rules of the approved foreign market.~~

RG 72.22 ~~A company relying on [CO 00/185] must still comply with s706, 707, 708, 710, 711(1)–(4), 718, 723(1), 727(1), 727(2), 727(4), 728, 729, 731, 733, 736 and 738.~~

## Licensing relief

~~RG 72.23~~ RG 72.24 Class Order [CO 03/606] *Financial product advice—exempt documents* provides relief from the requirement to obtain an Australian financial

~~services~~ (AFS) licence for general advice contained in a document that is required under a foreign regulated control transaction. This relief applies generally to control transactions that are regulated in the jurisdiction of an approved foreign market and is not limited to control transactions that satisfy the requirements for disclosure relief referred to in [RG 72.15](#)~~RG 72.14~~.

~~RG 72.24~~[RG 72.25](#) [CO 03/606] also provides licensing relief for general advice that is contained in an explanatory statement for a scheme of arrangement that is regulated in Hong Kong, Malaysia, New Zealand, Singapore, South Africa or the United Kingdom. For more information about this relief, see RG 188.

~~RG 72.25~~[RG 72.26](#) If a person provides a document to Australian residents in connection with a foreign regulated control transaction, this may be providing general advice. Without relief, the person providing the document may need to obtain an AFS licence for the provision of any general advice contained in the document.

## D Foreign ~~companies~~ entities making 20 or fewer offers in Australia in 12 months

### Key points

The draft ASIC Corporations (Foreign Securities—Small Scale Personal Offers) Instrument 2015 gives ~~We have given conditional class order~~ relief from the prospectus and PDS provisions for ~~a foreign company that offers~~ of securities that are in a class that is quoted on an approved foreign market where:

- the offer is a personal offer (RG 72.26);
- the number of persons in Australia to whom securities are issued is not more than 20 in 12 months (RG 72.27(a)); and
- Australian offerees are given any disclosure required in the primary foreign jurisdiction (with an English translation if the disclosure is in a foreign language) (RG 72.27(c)).
- ~~• has not exceeded the 20 investors ceiling within Australia, irrespective of the total number of issues made worldwide; and~~
- ~~• is already complying with the listing requirements of an approved foreign market and is therefore subject to the ongoing disclosure requirements of, and supervision by, that market (see RG 72.28–RG 72.30).~~

We will also consider granting case-by-case relief to allow a foreign ~~company~~ entity whose securities are about to be quoted to make 20 or fewer offers in Australia in 12 months subject to additional conditions: see RG 72.30~~RG 72.31~~.

### Offers in the same class of securities

RG 72.27 ~~Class Order [CO 00/214]~~ The draft ASIC Corporations (Foreign ~~Securities—Small Scale Personal Offers) Instrument 2015:~~ *listed foreign companies making 20 or fewer offers in Australia in 12 months* gives prospectus and PDS relief for foreign ~~companies~~ entities who ~~are making~~ make personal ~~those~~ offers of securities in Australia. An offer is a personal offer if it is not transferable and is made to a person who is likely to be interested in the offer, because of:

- (a) previous contact with the issuer;
- (b) some professional or other connection with the issuer; or
- ~~(c)~~ (c) the person's statements or actions (which indicate that they are interested in offers of that kind) in the same class of securities currently held by Australian investors.

~~RG 72.26~~ RG 72.28 This relief ~~is granted~~ applies where:

- (a) ~~the number of persons in Australia to whom an offer has been made securities have been issued in reliance on the relief in the preceding 12 months~~ is no more than 20 in any 12-month period;

Note: Our relief for foreign small scale personal offers operates in addition to the exemption in s708(2) and 1012E. Offers made in reliance on the legislative exemption do not count toward the 20-investor limit in our relief and vice versa.

- ~~(a) each offer was personally made to the offeree and is not transferable;~~
- (b) the securities are in a class that is quoted trading unsuspended on an approved foreign market and trading in the class is not suspended;
- (c) at or before the time the offer is made, Australian offerees are given any document relating to the offer that would have been required to be given to them under the laws of the primary foreign jurisdiction if they received the offer in that jurisdiction ~~the disclosure documents for the securities being offered comply with the operating rules of the approved foreign market and legislative requirements of the jurisdiction of listing~~;
- ~~(d) a copy of those documents, with English translations where necessary, is provided to each offeree; and~~

Note: 'Primary foreign jurisdiction' means the place of the approved foreign market on which the securities in the offer class are quoted or, if the securities in the offer class are quoted on more than one approved foreign market, the place of the approved foreign market on which the securities were first quoted.

- ~~(d) if the disclosure given to Australian offerees is not in English, a certified English translation is provided; and~~
- (e) ~~the documents include or are~~ disclosure given to Australian offerees includes or is accompanied by a statement explaining that:
- (i) ~~the documents were prepared under the law and operating rules of a foreign market for the purposes of compliance with foreign regulatory requirements~~;
  - (ii) the documents may not contain all the information required for Australian disclosure documents; and
  - (iii) the ~~issuer~~ offeror is not subject to the continuous disclosure requirements of the Corporations Act (if applicable).

RG 72.29 Our relief for small scale personal offers requires any offer document to be translated into English if the original disclosure is in a foreign language. This is because offerees who receive an offer under the draft ASIC Corporations (Foreign Securities—Small Scale Personal Offers) Instrument 2015 may not have a pre-existing investment with the entity, and it cannot be presumed that they are confident in making an investment decision when the disclosure is in a foreign language.

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~~RG 72.27~~[RG 72.30](#) We do not intend this relief to be a precedent for giving general relief from the prospectus [or PDS](#) provisions of the Corporations Act when a foreign [company entity](#) wants to raise funds in Australia.

## Offers where securities are about to be quoted

~~RG 72.28~~[RG 72.31](#) We will also consider granting case-by-case relief to allow a foreign [company entity](#) whose securities are about to be quoted to make 20 or fewer offers in Australia in 12 months. We would grant this relief on the same terms as we do for entities whose securities are already quoted, with the following two additional conditions:

- (a) the [company entity](#) must prepare a disclosure document that fully complies with the relevant local law [in the primary foreign jurisdiction](#); and
- (b) if the securities are not quoted within 14 days of the date stated in the foreign offer document, any allotment or issue to Australian offerees is void. The foreign [company entity](#) must repay any money received by it under the disclosure document as soon as practicable.

## E Advertising and publicity of offers

### Key points

~~We have given class order relief to authors and publishers of certain notices or reports about foreign companies that may otherwise breach. The draft ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015 provides relief from the restrictions on advertising and publicity in s734 and 1018A for advertisements relating to foreign securities that are only incidentally published in this jurisdiction: see RG 72.32–RG 72.36.~~

~~The draft ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015 gives relief from s734 and 1018A for:~~

- ~~• notices or reports relating to an offer of foreign securities that are given to the market operator of an approved foreign market; or~~
- ~~• notice or reports of a general meeting of an entity listed on an approved foreign market: RG 72.35.~~

RG 72.32 Sections 734(2) and 1018A of the Corporations Act sets out restrictions on the advertising and publicity associated with offers of securities in Australia. The draft ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015 and draft ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015 give relief from these restrictions for advertisements and other notices relating to foreign securities that are only incidentally circulated or published in Australia.

Note: The advertisement must still comply with the law in the foreign jurisdiction and the other provisions of the Corporations Act (such as s1041H's prohibition on misleading and deceptive conduct in this jurisdiction).

RG 72.33 The relief given by the draft ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015 and draft ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015 is technical and does not extend to offers of securities, which must still comply with the Corporations Act. For example, a foreign entity may not be able to offer or issue securities to a person in Australia who responds to an advertisement covered by the draft ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015 without first giving that person a disclosure document lodged with ASIC (unless the offer is covered by another exemption).

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## Relief for authors and publishers

~~RG 72.34~~ The draft ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015 gives ~~We have given class order~~ relief from the ~~s734~~ ~~restrictions s734(2) and 1018A~~ to authors and publishers who publish an advertisement or statement relating to foreign securities that is incidentally published in Australia.

~~RG 72.35~~ The relief covers advertisements and statements published in:

- ~~(a) newspapers and magazines;~~
- ~~(b) radio and television broadcasts; and~~
- ~~(c) electronic services (including the internet) that are operated on a commercial basis and are similar to newspapers, magazines or radio or television broadcasts.~~

~~RG 72.29~~ ~~to authors and publishers of notices and reports regarding securities printed and circulated substantially outside Australia. Without this relief, authors and publishers of such notices and reports may inadvertently breach the Corporations Act when that material is circulated inside Australia. To ensure this relief is not abused, we have imposed stringent conditions to ensure that publications that should comply with the Corporations Act do so.~~

## Relief for authors

~~RG 72.30~~ ~~Class Order [CO 00/178] Foreign securities: publishing of reports and notices~~ gives relief to the author of a statement or advertisement for foreign securities appearing within a foreign newspaper or periodical that is circulated in Australia. It exempts the author from s734(2) if the advertisement or statement:

- ~~(a) is published in a newspaper or periodical produced and substantially circulated outside Australia;~~
- ~~(b) is not distributed in Australia, whether directly or indirectly, by or on behalf of the author; and~~
- ~~(c) complies with the operating rules of the approved foreign market and the legislative requirements of the jurisdiction in which the newspaper or periodical is produced.~~

## Relief for publishersRelief for entities listed on approved foreign market

- ~~RG 72.31~~ — ~~Class Order [CO 00/179] *Foreign securities: publishing of reports and notices* exempts foreign publishers of an advertisement or statement about foreign securities from s734(2) if the advertisement or statement:~~
- ~~(a) is published in a newspaper or periodical produced and substantially circulated outside Australia;~~
  - ~~(b) either makes it clear that Australian residents cannot act on the advertisement or statement or is published in a newspaper or periodical that is not advertised in Australia; and~~
  - ~~(c) to the best knowledge of the publisher, complies with the operating rules of the approved foreign market and legislative requirements of the jurisdiction where the newspaper or periodical is produced.~~

RG 72.36 Section 734(7) gives a general exception from the advertising restrictions in s734(2) for certain notices given by a listed body, including notices given to the market operator.

~~RG 72.32~~RG 72.37 ~~Class Order [CO 00/180] *Foreign securities: publishing of reports and notices* exempts foreign publishers of notices circulated~~The draft ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015 gives similar relief for notices given by bodies listed on an approved foreign market. in Australia from s734(2) where those notices:An advertisement or publication will not contravene s734(2) if it:

- (a) relates ~~solely~~ to an offer of securities of a body that is listed ~~quoted~~ on an approved foreign market and consists of a notice or report by the foreign ~~company entity~~, or one of its officers, about its affairs to the that approved foreign market~~market operator~~; or
- (b) consists solely of a notice or report of a general meeting of a body that is listed on an approved foreign market~~foreign company the securities of which are quoted on an approved foreign market~~.

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## F Other relief

### Key points

~~In [CO 00/181], we have given procedural prospectus relief to foreign companies making offers to Australian investors: see RG 72.38–RG 72.40.~~

We will consider ~~further~~ procedural relief ~~for offers of foreign securities from the prospectus provisions~~ on a case-by-case basis: see RG 72.38–RG 72.39.

Some of our other regulatory guides provide guidance on disclosure relief for foreign issuers offering securities in Australia: see RG 72.40–RG 72.46.

### ~~Procedural relief—Expiry date~~

~~RG 72.33—Class Order [CO 00/181] *Foreign securities: publishing of reports and notices* gives procedural prospectus relief to foreign companies making offers to Australian investors. In particular, the class order gives conditional relief from the prohibition in s711(6) against issuing securities under the prospectus later than 13 months after the date of the prospectus.~~

~~RG 72.34—The prospectus for the offer must still state that no securities will be issued to an investor with an Australian address more than 13 months after the date of the prospectus.~~

~~RG 72.35—The conditions of this relief are:~~

- ~~(a) the foreign company must:
 
  - ~~(i) have securities quoted on an approved foreign market and trading in those securities cannot be suspended; or~~
  - ~~(ii) reasonably expect a class of its securities to be quoted on an approved foreign market following the close of the offer;~~~~
- ~~(b) the offer must be in respect of securities in a class of securities quoted, or reasonably expected soon to be quoted, on an approved foreign market;~~
- ~~(c) the offer must be made in Australia and in the jurisdiction of an approved foreign market;~~
- ~~(d) the foreign company must have prepared a prospectus that:
 
  - ~~(i) complies with the operating rules of an approved foreign market and the legislative requirements of the jurisdiction of that market;~~
  - ~~(ii) has been lodged with the responsible regulatory authority in that jurisdiction; and~~~~

- ~~(iii) has been lodged with ASIC (with an English translation where necessary);~~
- ~~(e) the foreign company must have lodged with ASIC copies of any other documents provided to a responsible regulatory authority in relation to the offer; and~~
- ~~(f) the prospectus lodged with ASIC must:~~
  - ~~(i) state that the offeror submits to the jurisdiction of the Australian courts; and~~
  - ~~(ii) nominate an agent resident in this jurisdiction for the service of documents.~~

## Case-by-case procedural relief

~~RG 72.36~~[RG 72.38](#) We will consider applications for ~~further~~ procedural relief from the prospectus ~~and PDS~~ provisions. We will not provide relief from the general disclosure requirement in s710 or the disclosure of particular fees and benefits in s711(3).

~~RG 72.37~~[RG 72.39](#) We may provide ~~additional~~ procedural relief from the prospectus ~~and PDS~~ provisions if we are satisfied that:

- (a) the foreign ~~company entity~~ issuing the ~~prospectus disclosure~~ has complied with a requirement in the jurisdiction of an approved foreign market that is comparable to the provision in the Corporations Act from which it is seeking relief;
- (b) practical difficulties will arise if the relief is not granted;
- (c) investor protection will not be reduced if the relief is given; and
- (d) the securities in the offer or invitation are in a class of securities quoted, or reasonably expected soon to be quoted, on an approved foreign market.

## Other relevant regulatory guides

~~RG 72.38~~[RG 72.40](#) The following regulatory guides may also be relevant to disclosure by foreign ~~issuers entities~~ offering securities in Australia.

### Foreign collective investment schemes

~~RG 72.39~~[RG 72.41](#) Regulatory Guide 178 *Foreign collective investment schemes* (RG 178) describes the relief we provide for foreign collective investment schemes. This includes relief for rights issues made by foreign collective investment schemes.

## Foreign employee [shareincentive](#) schemes

[RG 72.40](#)[RG 72.42](#) Foreign companies that offer Australian employees securities as part of an employee [shareincentive](#) scheme may rely on the relief described in Regulatory Guide 49 *Employee [shareincentive](#) schemes* (RG 49).

## Electronic prospectuses

[RG 72.41](#)[RG 72.43](#) Foreign companies seeking to use an electronic prospectus in Australia should consult Regulatory Guide 107 *[Electronic prospectuses](#)* [Fundraising: Facilitating electronic offers of securities](#) (RG 107).

## Enhanced disclosure

[RG 72.42](#)[RG 72.44](#) Some foreign companies may be disclosing entities under s111AC and therefore subject to certain periodic reporting and continuous disclosure requirements. These requirements, and our policy on giving relief from the requirements, are discussed in Regulatory Guide 95 *Disclosing entity provisions relief* (RG 95).

## Foreign schemes of arrangement

[RG 72.43](#)[RG 72.45](#) As mentioned in Section C, RG 188 describes the prospectus and PDS relief we have given for schemes of arrangement in certain foreign jurisdictions.

## Mutual recognition of trans-Tasman securities offerings

[RG 72.44](#)[RG 72.46](#) The trans-Tasman mutual recognition scheme allows Australian and New Zealand issuers to offer [securities-financial products](#) or interests in collective or managed investment schemes in both countries using one disclosure document prepared under regulation in their home country. Issuers who wish to operate under the scheme will be able to comply with minimal entry and ongoing requirements agreed to between the two countries and prescribed in each country's law: see Regulatory Guide 190 *Offering [securities-financial products](#) in New Zealand and Australia under mutual recognition* (RG 190).

## G Approved foreign markets

### Key points

Much of the relief referred to in this guide applies where the relevant foreign securities are quoted on an 'approved foreign market'.

RG 72.47 sets out a list of approved foreign markets for the purposes of the relief and RG 72.51 identifies our criteria for approving a market as an approved foreign market.

### Current ASIC approved markets

~~RG 72.47 We have designated the following financial markets as 'approved foreign markets' for the purposes of the relief referred to in this guide. Approved foreign markets are the main board of any of the following financial markets:~~

- ~~(a) Borsa Italiana;~~
- ~~(b) Bursa Malaysia;~~
- ~~(c) Euronext Amsterdam;~~
- ~~(d) Euronext Paris;~~
- ~~(e) Frankfurt Stock Exchange;~~
- ~~(f) Hong Kong Stock Exchange;~~
- ~~(g) JSE (also known as the Johannesburg Stock Exchange);~~
- ~~(h) London Stock Exchange;~~
- ~~(i) NASDAQ Global Market or the NASDAQ Global Select Market;~~
- ~~(j) New York Stock Exchange;~~
- ~~(k) NYSE MKT;~~
- ~~(l) NZX;~~
- ~~(m) Singapore Exchange;~~
- ~~(n) SIX Swiss Exchange;~~
- ~~(o) Tokyo Stock Exchange; and~~
- ~~(p) Toronto Stock Exchange.~~
- ~~(a) —~~
- ~~(b) American Stock Exchange;~~
- ~~(c) Borsa Italiana;~~
- ~~(d) Bursa Malaysia Main Board and Bursa Malaysia Second Board;~~

- ~~(e) Euronext Amsterdam;~~
- ~~(f) Euronext Paris;~~
- ~~(g) Frankfurt Stock Exchange;~~
- ~~(h) Hong Kong Stock Exchange;~~
- ~~(i) JSE;~~
- ~~(j) London Stock Exchange;~~
- ~~(k) NASDAQ Stock Market;~~
- ~~(l) New York Stock Exchange;~~
- ~~(m) New Zealand Exchange;~~
- ~~(n) Singapore Exchange;~~
- ~~(o) SWX Swiss Exchange;~~
- ~~(p) Tokyo Stock Exchange; and~~
- ~~(q) Toronto Stock Exchange;~~

~~Unless otherwise stated, o~~Our relief only extends to the main board of these markets.

~~RG 72.45~~RG 72.48 We have approved these foreign markets because we believe they are comparable to the ~~Australian Securities Exchange (ASX) market~~ in terms of being fair, efficient, well-informed and internationally competitive markets.

## Approving other markets

~~RG 72.46~~RG 72.49 We will accept applications for additional foreign markets to be included in the list of approved foreign markets. Applications should address the criteria in ~~RG 72.50~~RG 72.54. An application should be accompanied by an English translation of the rules of the foreign market and, if applicable, the market's policy manual.

~~RG 72.47~~RG 72.50 A person other than the foreign market may make the application. An application may come from a market participant or a foreign ~~company entity~~ with securities listed on the market. In this case, the application must include a letter from the foreign market verifying the information given.

~~RG 72.48~~RG 72.51 When considering the approval of other foreign markets and adding them to the list in ~~RG 72.46~~RG 72.50, we will take into account whether the market:

- (a) is a member of the World Federation of Exchanges ~~(formerly the Federation Internationale des Bourses de Valeurs);~~

- (b) is internationally recognised (i.e. it has concessional treatment and recognition from other jurisdictions). In particular, we will have regard to whether the body applying for approval is:
  - (i) a designated off-shore securities market under Regulation S of the *Securities Act 1933* (US); and
  - (ii) a Stock Exchange Automated Quotation International eligible exchange under the London Stock Exchange regime;
- (c) has rules that meet ASX's listing and quotation, market information, regulatory and trading and settlement principles;
- (d) is a key world trading centre. This will be determined having regard to:
  - (i) the market's size relative to other exchanges in its geographic region; and
  - (ii) the links the market maintains with other foreign exchanges or with specific Australian industries; and
- (e) is overseen by a government regulatory authority.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services  Note: This is a definition contained in s761A.
approved foreign market	<del>A foreign financial markets listed in our instruments for the purposes of relief: see RG 72.47</del> <del>Any one or more of the foreign financial markets approved by ASIC for the purposes of the relief referred to in this policy and listed at RG 72.50</del>
ASIC	Australian Securities <del>&amp;and</del> Investments Commission
ASX	<del>ASX Limited or the exchange market operated by ASX Limited</del> <del>Australian Securities Exchange</del>
bid class	The class or classes of securities the subject of a foreign scrip takeover
[CO 00/183] (for example)	An ASIC class order (in this example numbered 00/183)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Act
foreign scrip takeover	A foreign regulated takeover where scrip forms all or part of the consideration offered for bid class securities
PDS	Product Disclosure Statement
<u>Product Disclosure Statement</u>	<u>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</u>  <u>Note: See s761A for the exact definition.</u>
RG 178 (for example)	An ASIC regulatory guide (in this example numbered 178)
rights issue	An offering of securities by a company to all its shareholders in proportion to their existing holdings

## Related information

### Headnotes

~~Prospectus, PDS, disclosure, foreign companies, relief, fundraising, rights issue, small scale offering, approved foreign markets, foreign takeovers, foreign schemes of arrangement~~  
[approved foreign markets, disclosure, foreign companies, foreign schemes of arrangements, foreign takeovers, fundraising, PDS, Product Disclosure Statement, prospectus, rights issue, small scale personal offer](#)

### Class orders [and instruments](#)

[CO 03/606] *Financial product advice—exempt documents*

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

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

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

[ASIC Corporations \(Disclosure Relief—Compromises or Arrangements\) Instrument 2015](#)

[ASIC Corporations \(Foreign Securities—Foreign Scrip Bids\) Instrument 2015](#)

[ASIC Corporations \(Foreign Securities—Incidental Advertising\) Instrument 2015](#)

[ASIC Corporations \(Foreign Securities—Publishing Notices\) Instrument 2015](#)

[ASIC Corporations \(Foreign Securities—Rights Issues\) Instrument 2015](#)

[ASIC Corporations \(Foreign Securities—Small Scale Personal Offers\) Instrument 2015](#)

### Regulatory guides

RG 49 *Employee ~~share~~-incentive schemes*

RG 51 *Applications for relief*

RG 95 *Disclosing entities provisions relief*

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RG 107 ~~Electronic prospectuses~~ Fundraising: Facilitating electronic offers of securities

RG 178 *Foreign collective investment schemes*

RG 188 *Disclosure in reconstructions*

RG 190 Offering ~~securities~~ financial products in New Zealand and Australia under mutual recognition

## **Legislation**

Corporations Act ~~2001~~, Pts 5.1, 6D.2, 6D.3 and 7.9, s 111AC, ~~706~~, 707(3), 708 (2), ~~708A~~, 710, 711 (3), ~~718~~, 723, ~~727~~, 728, ~~729~~, 730, ~~731~~, 733, 734, ~~735~~, ~~736~~, ~~738~~, 1012A, 1012B, ~~and~~ 1012C, 1012E, 1018A and 1041H

## **Consultation papers and reports**

CP 79 *Disclosure relief for foreign scrip takeovers*

CP 225 Remaking ASIC class orders on offers of foreign securities

Report on the Public Hearing February 1992 on the Promotion and Sale of Foreign Securities in Australia 1992 ASC Digest PH 58

## **Media and other releases**

~~IR 07-12 ASIC proposes prospectus relief for foreign scrip takeovers (28 March 2007)~~

~~IR 07-34 ASIC releases updated policy on foreign securities prospectus relief (3 July 2007)~~

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