

## **[CO 03/1098]**

# **Securitisation special purpose vehicles and securitisation managers**

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*ASIC has been working with the securitisation industry for some time regarding the application of the FSR regime to the special purpose vehicles established in the course of a securitisation transaction.*

*Class Order [CO 03/1098] grants temporary licensing relief to enable final discussions with industry about the appropriateness and form of any permanent relief. This includes further consideration of the importance of ensuring that a principal (whether a licensee or not) takes responsibility for the acts of the special purpose vehicle entities.*

### ***Amending class order***

[CO 04/231]

[CO 04/982]

[CO 04/1622]

### ***Date of operation***

10/3/2004

17/8/2004

11/1/2005

Australian Securities and Investments Commission  
Corporations Act 2001 — Paragraph 911A(2)(1) — Exemption

### ***Securitisation special purpose vehicles***

1. Under paragraph 911A(2)(1) of the *Corporations Act 2001* (the **Act**) the Australian Securities and Investments Commission (**ASIC**) exempts until 30 June 2005 a securitisation entity from the requirement to hold an Australian financial services licence for the provision of financial services in each of the following circumstances:
  - (a) all of the following apply:
    - (i) the service is issuing securitisation products that are financial products;
    - (ii) the issuing takes place in the ordinary course of the business of the securitisation entity;
    - (iii) either of the following is satisfied:
      - (A) the issue is to a person (the “intermediary”) who holds an Australian financial services licence with the purpose of the intermediary selling the securitisation products; or
      - (B) the issue is arranged by a person who holds an Australian financial services licence in circumstances where:

- (I) if the securitisation products are debentures — the offer to which the issue relates does not require disclosure to investors under Part 6D.2 of the Act; and
  - (II) in any other case — a Product Disclosure Statement is not required to be given;
- (b) both of the following apply:
- (i) the service is dealing in (other than issuing) financial products that are not derivatives or foreign exchange contracts; and
  - (ii) the dealing is entered into in the ordinary course of the business of the securitisation entity;
- (c) all of the following apply:
- (i) the service consists only of either or both of:
    - (A) dealing in derivatives;
    - (B) dealing in foreign exchange contracts;
  - (ii) the service does not involve the making of a market for derivatives or foreign exchange contracts;
  - (iii) the dealing is entered into for the purpose of managing a financial risk that arises in the ordinary course of the business of the securitisation entity;
  - (iv) the counterparty for the dealing is a wholesale client;
- (d) the service is providing a custodial or depository service in relation to financial products held by the securitisation entity in the ordinary course of the business of the securitisation entity.

*[Historical note: Para 1 amended 10/3/2004 [CO 04/231] by replacing 'debt instruments' with 'securitisation products' wherever occurring.*

*Para 1 further amended 17/8/2004 [CO 04/982] by replacing in the introductory paragraph the date '30 September 2004' with '31 March 2005'.*

*Para 1 further amended 11/1/2005 [CO 04/1622] by replacing in the introductory paragraph the date '31 March 2005' with '30 June 2005'.*

### *Securitisation managers*

2. Under paragraph 911A(2)(1) ASIC exempts until 30 June 2005 a person from the requirement to hold an Australian financial services licence for the provision of financial services in each of the following circumstances:

- (a) the service is arranging for a securitisation entity to deal in financial products in one of the ways covered by subparagraphs 1(a) to (c); or
- (b) both of the following apply:
  - (i) the service is the provision of financial product advice; and
  - (ii) either:
    - (A) the advice is received by the securitisation entity in the ordinary course of its business and the advice is provided only to the securitisation entity; or
    - (B) the advice is general advice about securitisation products issued by the securitisation entity and is contained in a document offering those securitisation products for issue in the circumstances described in paragraph 1(a).

[*Historical note:* Para 2(b)(ii)(B) amended 10/3/2004 [CO 04/231] by replacing 'debt instruments' with 'securitisation products' (twice occurring).

Para 2 further amended 17/8/2004 [CO 04/982] by replacing in the introductory paragraph the date '30 September 2004' with '31 March 2005'.

Para 2 further amended 11/1/2005 [CO 04/1622] by replacing in the introductory paragraph the date '31 March 2005' with '30 June 2005'.

## Interpretation

In this instrument:

***custodial or depository service*** that a person provides has the meaning given by section 766E of the Act;

***debt instrument*** of a person means a chose in action that includes an undertaking by the person to repay money deposited with or lent to the person;

***financial product advice*** has the meaning given by section 766B of the Act;

***foreign exchange contract*** has the meaning given by section 761A of the Act;

***securitisation entity*** means a body corporate that satisfies all of the following requirements:

- (a) it carries on a business that consists of managing by way of a securitisation transaction some or all of the economic risk associated with assets, liabilities or investments (whether the body assumes the risk from another person or creates the risk itself); and

- (b) it is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances (regardless of whether the agency has determined that the body meets those criteria); and
- (c) it raises all or substantially all of its funds by issuing securitisation products on terms that the funds raised would be applied in the business referred to in paragraph (a);

*Note:* Paragraphs (a) and (b) of this definition are based on paragraphs 820-39(3)(a) and (c) and subsection 820-39(4) of the *Income Tax Assessment Act 1997*. An explanation of the operation of those provisions is set out at paragraphs 1.8 to 1.12 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No 5) 2003.

[*Historical note:* Definition *securitisation entity* amended 10/3/2004 [CO 04/231] by replacing 'debt instruments' with 'securitisation products' in para (c).]

***securitisation product*** means:

- (a) a debt instrument; or
- (b) an interest in a managed investment scheme; and

[*Historical note:* Definition *securitisation product* inserted 10/3/2004 [CO 04/231].]

***wholesale client*** has the meaning given by section 761G of the Act.

## **Commencement**

This instrument takes effect on gazettal.

Dated this 22nd day of December 2003

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments  
Commission