

Attachment 2 to CP 000: Draft class order

Australian Securities and Investments Commission Corporations Act 2001 — Paragraphs 741(1)(b), 911A(2)(l) and 1020F(1)(c) — Declaration and Exemption

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraphs 741(1)(b), 911A(2)(l) and 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 14/XX].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) the date of its gazettal.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Chapter 6D of the Act applies to all persons as if the following provisions were omitted, modified or varied:
 - (a) at the end of subsection 700(1) insert on a new line:

“In this Chapter, *securities* also includes depository interests.”;
 - (b) after subsection 700(1) insert:

“(1A) In this Chapter:

approved financial market means a financial market operated by:

- (a) ASX Limited;
- (b) Asia Pacific Exchange Limited; or
- (c) National Stock Exchange of Australia Limited.

CDN means CHESSE Depository Nominees Pty Limited.

depository interests, in relation to the underlying shares of a foreign company held by CDN in accordance with the operating

rules of a prescribed CS facility, means units of beneficial ownership in the shares that are issued for the purpose of enabling the shares to be recorded and transferred in accordance with the operating rules.

prescribed CS facility has the meaning given by section 761A.

underlying shares, in relation to depository interests, means the shares of a foreign company (or beneficial interests in shares of a foreign company) to which the depository interests relate and which are, or are proposed to be, admitted to quotation on an approved financial market.”;

(c) after section 703A insert:

“703B Application of this Chapter to depository interests

This Chapter applies in the following way to a foreign company and depository interests in relation to the underlying shares of the company:

- (a) the foreign company that issues the underlying shares is taken to be the issuer of the depository interests;
- (b) an offer of depository interests for issue is taken instead to be an offer of the underlying shares for issue by the foreign company;

Note: This paragraph applies to any offers of depository interests for issue including, but not limited to, initial public offers, rights issues, dividend reinvestment plans and bonus plans.

- (c) where paragraph (b) applies and the offer requires disclosure to investors under Part 6D.2, the disclosure document for the offer must explain the difference between holding depository interests and holding the underlying shares;
- (d) for the purposes of determining whether an offer of the underlying shares for issue by the foreign company is a rights issue:
 - (i) a person that before the offer holds depository interests in relation to the underlying shares is to be treated as notionally holding the shares; and
 - (ii) CDN is to be treated as not holding the shares mentioned in subparagraph (i);
- (e) for the purposes of determining whether an offer of the underlying shares for issue under a dividend reinvestment plan or bonus plan does not need disclosure to investors:

- (i) a person that holds depository interests in relation to the underlying shares is to be treated as notionally holding the shares; and
- (ii) CDN is to be treated as not holding the shares mentioned in subparagraph (i);
- (f) a sale offer of depository interests on an approved financial market by a person is taken instead to be a sale offer of the underlying shares on the financial market by the person;
- (g) the foreign company is not taken to have issued the underlying shares with the purpose referred to in subparagraph 707(3)(b)(i) merely because it issued the shares to CDN;
- (h) references to the provisions of Chapter 2M are to be read as references to section 601CK or the financial reporting laws of the kind set out in Chapter 2M applicable to the foreign company in its place of origin (as applicable);
- (i) references to orders under section 340 or 341 are to be read as references to declarations under subsection 601CK(7) or exemptions or waivers (however described) under the financial reporting laws of the kind set out in Chapter 2M applicable to the foreign company in its place of origin (as applicable).

For the avoidance of doubt, this section also applies to legislative instruments made under section 741 of the Act.”;

2. Part 7.9 of the Act applies in relation to all persons as if the following provisions were modified or varied as follows:

- (a) in Division 2, after section 1011A, insert:

“1011AB Division does not apply to depository interests

Nothing in this Division applies in relation to depository interests within the meaning of subsection 700(1A).

Note: Offers of depository interests are regulated by Chapter 6D in a particular way: see section 703B.”;

- (b) in Division 3, after subsection 1017F(2), insert:

“(2A) For the purposes of this section, the issuer of a depository interest within the meaning of subsection 700(1A) is taken to be the foreign company that issues the securities to which the interests relate.”.

Exemption

3. To avoid doubt, a foreign company (other than an excluded foreign company) is exempt from the requirement to hold an Australian financial services licence for arranging for CDN or a holder or proposed holder of depository interests to deal in depository interests that relate to the underlying shares of the foreign company in accordance with the operating rules of a prescribed CS facility.

Interpretation

4. In this instrument:

approved financial market means a financial market operated by:

- (a) ASX Limited;
- (b) Asia Pacific Exchange Limited; or
- (c) National Stock Exchange of Australia Limited.

CDN means CHESS Depository Nominees Pty Limited.

depository interests, in relation to the underlying shares of a foreign company that are held by CDN in accordance with the operating rules of a prescribed CS facility, means units of beneficial ownership in the shares that are issued for the purpose of enabling the shares to be recorded and transferred in accordance with the operating rules.

excluded foreign company means a foreign company covered by subsection 766C(5) of the Act.

prescribed CS facility has the meaning given by section 761A of the Act.

underlying shares, in relation to depository interests, means the shares of a foreign company (or beneficial interests in shares of a foreign company) to which the depository interests relate and which are, or are proposed to be, admitted to quotation on an approved financial market.

Dated this ___ day of November 2014

Signed by Grant Moodie
as a delegate of the Australian Securities and Investments Commission

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