



ASIC

Australian Securities & Investments Commission

[CO 02/1180] Disclosure for on-sale of securities and other financial products

Issued 29/11/2002

Class Order [CO 02/1180] provides relief from the on-sale provisions of the Corporations Act (s707(3) and (4) and s1012C(6) and (7)) for the on-sale of financial products where:

- 1. retail investors have the benefit of disclosure comparable to that which might otherwise have been contained in a prospectus or Product Disclosure Statement; or*
- 2. financial products were issued to persons under certain statutory or ASIC class order exemptions from disclosure requirements.*

This relief is discussed in Policy Statement [PS 173].

Note: *This class order is revoked from 1 July 2005: see [CO 04/671].*

<i>Amended by Class Orders:</i>	<i>Date of operation</i>
[CO 03/185]	30/4/2003
[CO 04/681]	1/7/2004

Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 741(1) and 1020F(1) —
Declaration and Revocation

Securities

Under subsection 741(1) of the *Corporations Act 2001* (“the Act”) the Australian Securities and Investments Commission (“ASIC”) declares that Chapter 6D applies to each person in the class of persons specified in Schedule A in the cases specified in Schedule B as if section 707 were modified or varied by omitting subsections 707(3) and (4) and substituting the following subsections:

- “(3) An offer of a body’s securities for sale within 12 months after their issue needs disclosure to investors under this Part if the body issued the securities:

- (a) without disclosure to investors under this Part; and
 - (b) with the purpose of the person to whom they were issued:
 - (i) selling or transferring them; or
 - (ii) granting, issuing or transferring interests in, or options or warrants over, them;
- and section 708 does not say otherwise.
- (4) Unless the contrary is proved, a body is taken to issue securities with the purpose referred to in paragraph 3(b) if any of the securities are subsequently sold, or offered for sale, within 12 months after their issue.”

Managed investment products

And under subsection 1020F(1) ASIC declares that Part 7.9 applies to each person in the class of persons specified in Schedule A and A1 in the cases specified in Schedule B as if section 1012C were modified or varied by omitting subsections 1012C(6) and (7) and substituting the following subsections:

- “(6) This subsection covers the circumstances in which:
- (a) the offer is made within 12 months after the issue of the financial product;
 - (b) the product was issued without a Product Disclosure Statement for the product being prepared; and
 - (c) the issuer issued the product with the purpose of the person to whom it was issued selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product.
- (7) Unless the contrary is proved, financial products are taken to be issued with the purpose referred to in paragraph 6(c) if any of the products are subsequently sold, or offered for sale, within 12 months after their issue.”

[Historical note: First paragraph under ‘Managed investments products’ amended 1/7/2004 [CO 04/681] by replacing the reference to ‘Schedule A’ with ‘Schedule A and A1’.]

Revocation (Transitional)

And under subsection 741(1) ASIC revokes Class Order [CO 02/272] with effect from 12 December 2003.

Note: Class Order [CO 02/272] provides relief from Part 6D for the on-sale of certain securities issued before 12 December 2002. As disclosure obligations for the

on-sale of these securities cease to apply 1 year after their issue, the relief ceases to be necessary from 12 December 2003.

SCHEDULE A — PERSONS TO WHOM THIS DECLARATION APPLIES

Any person who makes an offer of a body's securities or managed investment products ("products") for sale of the kind referred to in Schedule B.

SCHEDULE A1

Any person who makes a recommendation to acquire products of the kind referred to in Schedule B by way of transfer.

[*Historical note:* Sch A inserted 1/7/2004 [CO 04/681].]

SCHEDULE B — CASES IN WHICH THIS DECLARATION APPLIES

This Class Order applies only to an offer of securities or products for sale where those securities or products are:

1. issued by the body or responsible entity ("Issuer") on or after 12 December 2002 and before 1 July 2004; and
2. covered by at least one of the categories of relief set out in Schedule C.

[*Historical note:* Sch B amended 1/7/2004 [CO 04/681] by inserting in paragraph 1 the text 'and before 1 July 2004'.]

SCHEDULE C — CATEGORIES OF RELIEF

Category 1: Securities — disclosure of previously withheld information

- (1) The securities are in a class of securities that were:
 - (a) quoted ED securities of the Issuer listed on the financial market operated by ASX at all times in the 12 months before the date of issue; and
 - (b) quoted on that market during that period without being suspended from trading for more than a total of 5 trading days; and
- (2) there is a completed contract for the issue of the securities; and
- (3) if the securities are debentures of the Issuer — the Issuer has, in relation to those debentures, entered into a trust deed that

complies with section 283AB and has appointed a trustee that complies with section 283AC; and

- (4) at the time of issue of the securities, no determination under subsection 713(6) is in force with respect to the Issuer; and
- (5) at or about, and in any event by no later than 2 business days after, the time of issue, the Issuer notifies ASX that:
 - (a) all information of the kind that would be required to be disclosed under subsection 713(5) if a prospectus were to be issued in reliance on section 713 in relation to an offer of the securities has been disclosed to ASX; or
 - (b) there is no information of that kind to be disclosed; and
- (6) the offer for sale does not occur until after the notification referred to in paragraph (5) has occurred.

Category 2: Securities — prospectus disclosure at or after time of issue

- (1) The securities are in a class of securities that were quoted ED securities of an Issuer listed on the financial market operated by ASX; and
- (2) there is a completed contract for the issue of the securities; and
- (3) if the securities are debentures of the body — the body has, in relation to those debentures, entered into a trust deed that complies with section 283AB and appointed a trustee that complies with section 283AC; and
- (4) at the time of issue of the securities no determination under subsection 713(6) is in force with respect to the Issuer; and
- (5) either:
 - (a) a prospectus was issued in relation to securities of that class at or after the time of the issue of the securities but before any on-sale of the securities; or
 - (b) the securities were issued:
 - (i) to an underwriter under an underwriting agreement related to an offer under a prospectus; and
 - (ii) at or about the time of an issue to persons who applied for securities under the prospectus.

Category 3: Managed investment products — disclosure of previously withheld information

- (1) The products are in a class of securities that were:
 - (a) quoted ED securities of a scheme listed on the financial market operated by ASX at all times in the 12 months before the date of issue; and
 - (b) quoted on that market for that period without being suspended from trading for more than a total of 5 trading days; and
- (2) there is a completed contract for the issue of the products; and
- (3) at the time of issue of the products, the responsible entity of the scheme has not been notified in writing by ASIC that it may not, in respect of the scheme, rely on the relief provided under this category of this Class Order for a specified period because the entity has, in the previous 12 months, breached Chapter 2M, subsections 674(2) or 675(2) or sections 1016E or 1021E in respect of the scheme and that period has not ended; and
- (4) at or about, and in any event by no later than 2 business days after, the time of issue, the Issuer notifies ASX that:
 - (a) all information of the kind that:
 - (i) the Issuer is not required to include in a continuous disclosure notice provided to ASX because it is covered by an express exception in the listing rules of ASX; and
 - (ii) that would be required to be disclosed in a Product Disclosure Statement for an offer of the products,

has been disclosed to ASX; or
 - (b) there is no information of that kind to be disclosed; and
- (5) the offer for sale does not occur until after the notification referred to in paragraph (4) has occurred.

Category 4: Managed investment products — PDS disclosure at or after time of issue

- (1) The products are in a class of quoted ED securities of a scheme listed on the financial market operated by ASX; and
- (2) there is a completed contract for the issue of the products; and

- (3) either:
- (a) a Product Disclosure Statement that is an issue Statement for products in that class was prepared and lodged with ASIC before any on-sale of the products; or
 - (b) the products were issued:
 - (i) to an underwriter under an underwriting agreement related to an offer under a Product Disclosure Statement that is an issue Statement; and
 - (ii) at or about the time of an issue to persons who applied for products under the issue Statement.

Category 5: Employee share schemes

- (1) The securities were issued without disclosure to investors under Part 6D.2 because the Issuer relied upon any one or more of:
- (a) ASIC Class Orders [CO 00/220], [CO 00/223], [CO 02/264] or [CO 03/184]; or
 - (b) an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 with respect to an employee share scheme, or a like scheme, in terms similar to one of those Class Orders; or
- (2) The securities were issued by reason of the exercise of options issued or granted:
- (a) without disclosure to investors under Part 6D.2 because the Issuer relied upon any one or more of the instruments of relief referred to in paragraph (1) above; or
 - (b) without a prospectus under Division 2 of Part 7.12 of the old Corporations Law because the Issuer relied upon any one or more former instruments of relief which correspond to an instrument of relief referred to in paragraph (1) above.

[Historical note: Para (1)(a) of Category 5 amended 30/4/2003 [CO 03/185] by replacing the text “[CO 00/223] or [CO 02/264];” with the text “[CO 00/223], [CO 02/264] or [CO 03/184];”].

Category 6: Share purchase plans

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because the Issuer relied upon of any one or more of:

- (1) ASIC Class Orders [CO 00/194], [CO 02/831] or [CO 02/832];
or
- (2) an individual instrument of relief granted by ASIC to the Issuer which provided relief from Part 6D.2 or Part 7.9 with respect to a share purchase plan or a like plan in terms similar to one of those Class Orders.

Category 7: Options, convertible securities or products etc

- (1) The securities or products were issued by reason of the exercise of options or the conversion of convertible notes, converting notes, convertible preference shares or converting preference shares; and
- (2) those options, convertible or converting securities or products were issued with disclosure to investors under Part 6D.2, under a prospectus under Division 2 of Part 7.12 of the old Corporations Law or with a Product Disclosure Statement for the product being prepared, as is applicable; and
- (3) the exercise of the option, or the conversion, did not involve any further offer.

Category 8: Dividend reinvestment or bonus plans

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because subsections 708(13) or 1012D(3) applied.

Category 9: Compromises and arrangements

The securities were issued without disclosure to investors under Part 6D.2 because subsection 708(17) applied.

Category 10: Takeovers

The securities or products were issued without disclosure to investors under Part 6D.2 or without a Product Disclosure Statement for the product being prepared, as is applicable, because subsections 708(18) or 1012D(7) applied.

Category 11: Securities of exempt public authorities

The securities were issued without disclosure to investors under Part 6D.2 because subsection 708(21) applied.

Category 12: Executive officers — Transitional relief

- (1) The securities or products are in a class of quoted securities or quoted products of a body listed on the financial market operated by the ASX; and
- (2) there is a completed contract for the issue of the securities or products; and
- (3) the securities or products were issued after 11 December 2002 by reason of the exercise of options issued or granted on or before the date of this instrument without:
 - (a) disclosure to investors under Part 6D.2 because subsection 708(12) applied; or
 - (b) a prospectus under Division 2 of Part 7.12 of the old Corporations Law because paragraph 66(3)(e) of that old Law applied.

Note: Securities issued before 12 December 2002 as the result of the exercise of options of this kind are covered by Category 1A of Class Order [02/272]. These options may include options over managed investment products as those products were generally subject to Part 6D.2 before 11 March 2002. From that date certain managed investment products continue to be subject to Part 6D.2 under the transition provisions in Part 10.2.

Interpretation

In this instrument:

1. “ASX” means Australian Stock Exchange Limited;
2. “completed contract” means a contract where consideration for the issue of the securities or products has been fully paid;
3. “issue Statement” has a meaning given by subsection 1013A(1);
4. “old Corporations Law” means the Corporations Law as in force from time to time before 13 March 2000;
5. “products” means managed investment products;
6. “trading day” of a financial market means a day on which the market is open for trading in financial products;
7. references to a person offering securities or products includes a reference to the person inviting applications for the securities or products; and

8. except where otherwise stated, references to provisions are references to provisions of the Act.

Dated the 29th day of November 2002

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