



# Consultation Paper 220 Fundraising: Facilitating offers of CHESSE Depository Interests

## 1 Introduction

We refer to ASIC Consultation Paper 220 (“Fundraising: Facilitating offers of CHESSE Depository Interests”) dated May 2014 (**Consultation Paper**), the draft regulatory guide set out in Attachment 1 to the Consultation Paper (**Draft Regulatory Guide**) and the draft class order set out in Attachment 2 to the Consultation Paper (**Draft Class Order**).

## 2 Relief from subsection 707(3) of the Corporations Act

In the Draft Class Order, the following words have been included at the end of the proposed new section 703B of the *Corporations Act 2001* (Cth) (**Corporations Act**):

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

We welcome the inclusion of these words in the Draft Class Order, as they will allow the relief from subsection 707(3) of the Corporations Act granted by ASIC Class Order [CO 04/671] (a legislative instrument made under section 741 of the Corporations Act) to apply to the on-sale of securities in the form of CHESSE Depository Interests (**CDIs**) which are issued as consideration under a scheme of arrangement under Part 5.1 of the Corporations Act or a takeover bid under Chapter 6 of the Corporations Act.

When finalising the Draft Class Order, we submit that it is imperative for the above wording to be retained in the new section 703B of the Corporations Act. Removing this wording will result in scheme and takeover proponents continuing to need to apply for relief in schemes of arrangement or takeover bids where CDIs form all or part of the consideration and will cause ASIC’s limited resources to be unnecessarily diverted to considering requests for such relief on a case-by-case basis. As ASIC would be aware, such relief is currently necessary as ASIC Class Order [CO 04/671] only applies to bidders that issue securities under schemes of arrangement or takeover bids (and does not apply to the issue of CDIs by CHESSE Depository Nominees Pty Limited)<sup>1</sup>.

For completeness, and to provide additional clarity in relation to this issue, we submit that the following note be added to paragraph 45 of the Draft Regulatory Guide:

“Note 3: Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products* gives relief, for the avoidance of doubt, from the disclosure requirements in Ch 6D so that the disclosure requirements in Ch 6D do not apply to the on-sale of securities in the form of CHESSE Depository Interests which are issued as consideration under a scheme of arrangement or takeover bid.”

## 3 Paragraph 45 of the Draft Regulatory Guide

Finally, we submit that Note 2 of paragraph 45 of the Draft Regulatory Guide should be amended to delete the words “so that a cleansing statement may be given”.

These words are not necessary because ASIC Class Order [CO 04/671] provides on-sale relief without the need for a cleansing statement.

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<sup>1</sup> Examples of ASIC granting relief from subsection 707(3) of the Corporations Act in the context of schemes of arrangement or takeover bids where CDIs formed all or part of the consideration include: (1) Spur Ventures Inc.’s proposed acquisition of Atlantic Gold NL; (2) RTG Mining Inc.’s acquisition of Sierra Mining Limited; (3) Endeavour Mining Corporation’s acquisition of Adamus Resources Limited; and (4) Eldorado Gold Corporation’s acquisition of Sino Gold Mining Limited.