

**ASIC**

Australian Securities &amp; Investments Commission

APPLICANT: CAPITAL FUND MANAGEMENT LLP

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DATE: 21 AUGUST 2014

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## 1. Application

Capital Fund Management LLP (**Applicant**), as a Foreign Financial Service Provider (**FFSP**) has notified ASIC of its intention to rely on ASIC Class Order 03/1099 *UK regulated financial service providers* (**CO 03/1099**) which exempts a FFSP from the requirement to hold an AFSL subject to the satisfaction of certain eligibility criteria and conditions (**Notice of Reliance**).

## 2. Background

On 25 July 2014 the Applicant notified ASIC of its intentions as referred to in paragraph 1 above.

## 3. Relevant Law

- 3.1 Section 911A of the *Corporations Act 2001* (**Act**) provides that a person who carries on a financial services business in Australia must hold an Australian financial services (**AFS**) license, unless relief is granted.
- 3.2 Section 911A(2)(h) permits ASIC to exempt FFSPs from the obligation to hold an AFS license where the provision of financial services is to wholesale clients only and the FFSP is regulated by an overseas regulatory authority.

## 4. ASIC Policy

- 4.1 ASIC's Regulatory Guide 176 *Foreign financial services providers* (**RG 176**) provides further detail on the requirements as referred to in paragraph 3.2 above and sets out the matters to which ASIC will have regard in assessing whether it will exercise its exemption powers under the Act.
- 4.2 The Class Order provides relief where the overseas regulatory regimes have been assessed by ASIC as meeting the equivalence criteria under RG 176 (RG 176.52). The Class Order conditionally exempts foreign companies regulated by the Financial Conduct Authority of the United Kingdom (**FCA**) from the need to hold an AFS license for certain financial services provided that the FFSP satisfies the class order conditions as provided under Schedule A and B of the Class Order.

- 4.3 Information Sheet 157 *Practical guidance for foreign financial services providers (INFO 157)* provides further details on the matters an FFSP must satisfy in order to rely on the Class Order relief under RG 176.
- 4.4 Information Release 04-04 *Practical guidance for wholesale foreign financial services providers seeking licensing relief (IR 04-04)* requires that documents [provided in support of relief] should be original or certified copies.

## 5. Analysis

### *INFO 157*

- 5.1 The materials provided by the Applicant in its application dated 25 July 2014, (**Application**) satisfy the requirements contained within INFO 157. In particular, the Applicant has provided the following documents in compliance with INFO 157:
- a) a letter that meets the requirements of the '**Letter**' referred to in INFO 157 as included in the Application;
  - b) evidence of its registration as a limited liability partnership supported by a certified true copy of the execution version of the Limited Liability Partnership Deed signed by s 22, Head of Compliance of the Applicant and certified by s 22 (Partner of the Applicant) dated 16 July 2014 (**Annexure A**);
  - c) evidence of its authorisation, licence or permission from the FCA as supported by a printed extract of The Financial Services Register entry number 600018 updated 7/07/2014 certified by s 22 (Partner of the Applicant) dated 16 July 2014 (**Annexure B**);
  - d) evidence of the agreement with its local agent in Australia for the purposes of CO 03/1099 as detailed under paragraph 5.2 of this memorandum; and
  - e) a written consent letter dated 16 July 2014 signed by s 22 (Operations Manager of the Applicant) consenting to the sharing of information about itself between ASIC and the FCA.

### *Schedule A of the Class Order*

- 5.2 The following documents have been considered:

#### *Sch A(a))*

- (a) A certified copy of the current Part 4A Permission.

#### *Sch A(aa)*

- (b) A certified copy of the Certificate of Incorporation of a Limited Liability Partnership dated 7 February 2013 and the situation of its registered office is in

England and Wales.

*Sch A(b)(ii)*

- (c) Evidence in the form of a copy of the Deed Poll executed by s 22 (Partner of the Applicant) appointing Tanoa Pty Ltd (ACN 001 396 989) (**Agent**) as the Applicant's local agent in Australia for the purposes of the Applicant's reliance on CO 03/1099.

*Sch A(c)*

- (d) Confirmation by letter dated 25 July 2014 as contained in its Application that the Applicant's primary business is the provision of financial services.

*Sch A(d)*

- (e) Confirmation by letter dated 25 May 2014 that neither the Applicant, nor its Agent, has been notified by ASIC that they are excluded from relying on the relief as indicated in the Application.

*Sch A(e)*

- (f) Nothing in the materials<sup>1</sup> provided by the Applicant contravenes this section, so it is taken that the Applicant is compliant with the requirement that they notify ASIC should they become aware or should reasonably have become aware of matters that give it reason to believe that they have failed, other than in an immaterial respect, to comply with a requirement set out in Schedule C of CO 03/1099.

*Sch A(f)*

- (g) By the letter dated 25 July 2014 accompanying the Application, the Applicant has confirmed it has not notified ASIC that it will not rely on CO 03/1099.

***Schedule B of the Class Order***

5.3 The analysis of whether the Applicant has satisfied the conditions in Schedule B:

*Sch B(1)*

- (a) Evidence that the Applicant provides financial services in respect of financial products as evidenced in the written confirmation in the letter dated 25 July 2014 accompanying the Application;

*Sch B(2)(a)*

- (b) Evidence provided in support of the Sch A(a) requirements is adequate as demonstrated by the certified copy of the current Part 4A Permission Form

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<sup>1</sup> As accompanying the original Application or any supporting material provided

ADV and the certified copy of the Certificate of Incorporation of a Limited Liability Partnership dated 7 February 2013.

*Sch B(2)(b)*

- (c) This is evidenced in the letter dated 25 July 2014 and the Applicant's Deed of Reliance on CO 03/1099 (**Deed**) dated 16 July 2014 as executed by the Partner of the Applicant, s 22 and witnessed by the Operations Manager of the Applicant, s 22.

*Sch B(2)(c)*

- (d) The Deed meets each of the corresponding requirements under schedule B(2)(c) as evidenced in the following clauses:
- a. Sch B(2)(c)(i) - Clause 1.1
  - b. Sch B(2)(c)(ii) - Clause 1.2
  - c. Sch B(2)(c)(iii) - Clause 1.3
  - d. Sch B(2)(c)(iv) – Clause 1.4
  - e. Sch B(2)(c)(v) - Clause 1.5

s 22 as Partner is authorised to sign on behalf of the Applicant.

*Sch B(2)(d)*

- (e) The Applicant consents to the disclosure of any information between the FCA and ASIC that relates to the Applicant. This is evidenced in the Consent dated 16 July 2014 as executed by s 22 and witnessed by s 22

## **6. Recommendation**

ASIC has determined that the documents provided by the Applicant in support of its Notice of Reliance on the Class Order, are adequate.

s 22

Analyst  
Investment Managers and Superannuation