



21 September 2015

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Dear Ananda,

Thank you for the opportunity to comment upon the proposals set out in ASIC Consultation Paper CP236 *Remaking ASIC class orders on dematerialized securities and CHESS units of foreign securities*.

Class Order CO 02/312 Part 7.11, Division 4 financial products for ASTC.

We wish to comment upon the proposal to re-issue Class Order CO 02/312 Part 7.11, *Division 4 financial products for ASTC*.

The proposal is presented on the basis of extending the statutory warranties and indemnities provided for in the National Guarantee Fund provisions to additional financial products.

However, the proposed Class Order (as per Attachment 2 to CP 236) appears to have broader implications than set out in the consultation paper. The Class Order has the effect of extending Part 7.11 of the Act to the types of financial products set out in the inserted section 1074BB thereby facilitating the settlement of those products through CHESS.

We submit that since CO 02/312 was introduced, competition in the provision of market services has expanded and a broader range of products are now settled through ASX Settlement. ASX Settlement has extended its service offering to markets other than ASX. The benefit of CO 02/312 should be extended to that broader range of products in the interests of equality and competition.

For example, shares in a foreign company can be quoted on the APX market and settled via ASX Settlement. Similarly, depository interests in relation to financial products held by CHESS Depository Nominees Pty Limited can be quoted on the APX market and settled via ASX Settlement.



Further, APX has been in discussion with the SEGC to become a member of SEGC, thereby extending NGF protection to investors in the APX market. SEGC has, to date, been receptive to APX becoming a member. Those discussions are ongoing. The effect of limiting the proposed Class Order to ASX products as currently drafted is that, should APX become a member of SEGC, either a new Class Order would be required or protection would not be extended to APX traded products which are identical to those traded on ASX. This latter outcome would be inequitable for investors.

We submit that the draft class order should be amended to read as follows:

The following financial products are financial products the transfer of which will be effected through ASX Settlement Pty Limited under the regulations:

- (a) warrants that are:
 - (i) able to be traded on a financial market operated by a market licensee; or
 - (ii) admitted to the ASX Limited AQUA Quote Display Board;
- (b) interests in a managed investment scheme that is not required to be registered under Chapter 5C because of an instrument made under section 601QA and that are:
 - (i) able to be traded on a financial market operated by a market licensee; or
 - (ii) admitted to the ASX Limited AQUA Quote Display Board.
- (c) shares in, or debentures of, a foreign company that are quoted on a financial market operated by a market licensee;
- (d) shares and debentures quoted on a financial market operated by a market licensee that are issued by a body referred to in section 1073C; and
- (e) depository interests in relation to financial products held by CHESSE Depository Nominees Pty Limited in accordance with the operating rules of ASX Settlement Pty Limited.

If, as suggested in the Consultation Paper, the scope of the class order is *solely* for NGF purposes, the words “market licensee” above could be replaced by “market licensee which is a member of the SEGC”.

It would appear that without the extension of the Class Order in this manner, this range of products would be unreasonably precluded from trading on a competing market (such as APX) and/or the competing market’s investors may not have the benefit of NGF coverage if that market is an SEGC member, notwithstanding that the competing market’s licence and operating rules may permit such products, without each market operator seeking and obtaining a similar class order.

Class Order CO 00/2449 ASX Online – relief from paper lodgement.

We wish to comment upon the proposal to repeal Class Oder CO 00/2449 *ASX Online – relief from paper lodgement*.

The principals behind the relief granted in relation to the ASX market apply equally to the APX market. APX has previously applied for similar relief to that set out in CO 00/2449.

We support the rationale for repealing CO 00/2449 and the repeal of the class order itself. The rationale and the interpretation set out in RG107.21 will place the APX market on equal footing to that of the ASX



market. Equality of treatment of market operators for equivalent activities is essential for the evolution of competition for the provision of market services.

Our concern is that, whilst ASIC's interpretation in relation to facilitating electronic offers of securities is set out in RG107.21, ASIC's interpretation in relation to each of the provisions set out in Schedule B to CO 00/2449 will not be set out in any published ASIC document. Hence it will not be possible to refer listed entities to a reference source for ASIC's interpretation of these provisions. They will not be able to rely upon reference to CP 236 as it states that the proposal is only an indication of the approach ASIC may take and is not ASIC's final policy.

We strongly recommend that ASIC consider setting out its policy in this regard in a Regulatory Guide, which could address a range of issues relating to lodgement of documents with licenced market operators. We are aware that there are a number of matters, including other class orders, relating to lodgement of documents with licenced market operators which are under review by ASIC (or on which APX has made submissions seeking regulatory equality) and an opportunity could be taken to consolidate these into a single regulatory guide.

Yours sincerely,

David Lawrence
Chief Operating Officer