

ASIC Class Order [CO 03/1101]

US Federal Reserve and OCC regulated financial service providers

This instrument has effect under s911A(2)(l) of the *Corporations Act 2001*.

This compilation was prepared on 25 September 2012 taking into account amendments up to [CO 12/1266]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 911A(2)(l) — Exemption

Under paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission (*ASIC*) exempts the persons referred to in Schedule A from the requirement to hold an Australian financial services licence in the case referred to in Schedule B.

Schedule A

A corporation (the *body*) to which all of the following apply:

(a) the body is:

- (i) a bank holding company within the meaning given by section 2(a) of the Bank Holding Company Act of 1956 of the US or a subsidiary (that is not a bank within the meaning of section 2(c) of that Act) of such a bank holding company, in either case, where all of its activities are subject to a determination under either section 4(c)(8) or section 4(k) of that Act;
- (ii) the subject of a certificate of the OCC under section 27 of Title 12 of the United States Code or a subsidiary (that carries on a banking business) of a body that is subject to such a certificate and; or
- (iii) a corporation (an '*Edge corporation*') established and approved as an Edge corporation under section 211(5) of Title 12 of the Code of Federal Regulations of the US or a subsidiary of an Edge corporation;

(aa) except in the case of a subsidiary of an Edge corporation, the body is either:

- (i) a body corporate incorporated in the US or a State of the US; or
- (ii) a partnership that is a foreign company formed in the US or a State of the US;

(b) the body:

- (ia) is a company; or
- (i) is registered under Division 2 of Part 5B.2 of the Act; or

- (ii) has an Agent at the time the body first purports to rely on this instrument and, from that time, has not failed to have an Agent for any consecutive period of 10 business days;
- (c) the body's primary business is the provision of financial services;
- (d) neither the body nor its Agent has been notified by ASIC that the body is excluded from relying on this instrument;
- (e) if the body becomes aware or should reasonably have become aware of matters that give it reason to believe that it has failed, other than in an immaterial respect, to comply with a requirement set out in Schedule C:
 - (i) 15 business days have not passed since the body became so aware or should reasonably have become so aware without the body providing full particulars of the failure to ASIC (to the extent that the body knows those particulars or would have known them if it had undertaken reasonable enquiries); and
 - (ii) 30 business days have not passed from ASIC receiving those particulars from the body without ASIC notifying the body that it may continue to rely on this instrument; and
- (f) the body has not notified ASIC that it will not rely on this instrument.

Schedule B

Where:

1. the body provides any of the following financial services (the *financial services*) in this jurisdiction to wholesale clients:
 - (a) providing financial product advice;
 - (b) dealing in a financial product;
 - (c) making a market for a financial product; or
 - (d) providing a custodial or depository service;in respect of any of the following financial products:
 - (e) eligible deposit products;
 - (f) derivatives;
 - (g) foreign exchange contracts;
 - (h) securities;
 - (i) facilities for making non-cash payments;
 - (j) debentures, stocks or bonds issued by a government;

- (k) managed investment products; or
 - (l) interests in a managed investment scheme that is not required to be registered under Chapter 5C of the Act; and
2. the body has provided ASIC with:
- (a) evidence that paragraph (a) of Schedule A is satisfied that ASIC has stated in writing is adequate;
 - (b) a notice that it will provide financial services in this jurisdiction in reliance on this instrument;
 - (c) a deed of the body for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act that applies notwithstanding that the body may have ceased to rely, or never have relied, on this instrument, which deed provides that:
 - (i) the deed is irrevocable except with the prior written consent of ASIC;
 - (ii) the body submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;
 - (iii) the body covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services;
 - (iv) if the body is not a company or registered under Division 2 of Part 5B.2 of the Act, service of process on the body in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise can be effected by service on the Agent; and
 - (v) the body covenants that, on written request of the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the Federal Reserve or the OCC (as the case requires) to disclose to ASIC and ASIC to disclose to the Federal Reserve or the OCC (as the case requires) any information or document that the Federal Reserve or the OCC (as the case requires) or ASIC has that relates to the body; and
 - (d) written consents to the disclosure by the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) to ASIC and by ASIC to the Federal Reserve or the OCC (as the case requires) of any information or document that the Federal Reserve or the OCC (as the case requires) or ASIC has that relates to the body. The consents must be in such form (if any) as ASIC specifies in writing.

Schedule C

1. The body must provide each of the financial services in this jurisdiction in a manner which complies with the US regulatory requirements that apply to the provision of the service.
2. The body must:
 - (a) notify ASIC, as soon as practicable and in any event within 15 business days after the body became aware or should reasonably have become aware, and in such form if any as ASIC may from time to time specify in writing, of the details of:
 - (i) each significant particular exemption or other relief which the body obtains from the US regulatory requirements relevant to the financial services the body provides or intends to provide in this jurisdiction; and
 - (ii) each action or investigation of the following kinds taken by the Federal Reserve, the OCC or other overseas regulatory authority against the body in a foreign jurisdiction in relation to financial services provided in the foreign jurisdiction:
 - (A) significant enforcement action;
 - (B) significant disciplinary action;
 - (C) significant investigation (unless, after having taken reasonable steps to enable notification to be given to ASIC, the body is prohibited by law from giving such notification but only to the extent of the prohibition); and
 - (b) provide written disclosure to all persons to whom the financial services are provided in this jurisdiction (before the financial services are provided) containing prominent statements to the following effect:
 - (i) the body is exempt from the requirement to hold an Australian financial services licence under the Act in respect of the financial services; and
 - (ii) the body is regulated by the Federal Reserve (if the body is covered by subparagraph (a)(i) or (iii) of Schedule A) or the OCC (if the body is covered by subparagraph (a)(ii) of Schedule A) under US laws, which differ from Australian laws; and
 - (c) if ASIC gives the body a written notice directing the body to lodge with ASIC, within the time specified in the notice, a written statement containing specified information about any financial service provided by the body in this jurisdiction—comply with the notice.

Interpretation

In this instrument:

address, in relation to a company, means the address of the registered office of the company;

Agent means a natural person resident in this jurisdiction or a company, whose name and address were last notified to ASIC by the body for the purposes of this instrument, and who is authorised to accept on the body's behalf, service of process from ASIC and, in relation to proceedings relating to a financial services law, from any person referred to in subsection 659B(1) of the Act;

custodial or depository service has the meaning given by section 766E of the Act;

derivative has the meaning given by section 761D of the Act;

eligible deposit product means any deposit-taking facility including a deposit product as defined in section 761A of the Act;

Federal Reserve means:

- (a) the Board of Governors of the Federal Reserve System of the US; and
- (b) the Federal Reserve Bank within the Federal Reserve System that has responsibility for supervising the body;

financial product advice has the meaning given by section 766B of the Act;

financial services law has the meaning given by section 761A of the Act;

foreign exchange contract has the meaning given by section 761A of the Act;

making a market has the meaning given by section 766D of the Act;

non-cash payments has the meaning given by section 763D of the Act;

notice and **notified** mean, respectively, written notice and notified in writing;

OCC means the Comptroller of the Currency of the US;

overseas regulatory authority means a foreign regulatory authority (other than the Federal Reserve or the OCC) which regulates financial services and which is established by or for the purposes of a foreign government or legislative body;

securities has the meaning given by section 761A of the Act;

subsidiary:

- (a) in relation to a bank holding company, has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 of the US; and
- (b) otherwise, has the meaning given by section 9 of the Act.

US means the United States of America;

US regulatory requirements means the rules that apply in relation to the financial services including any applicable legislation, instruments made under that legislation and any relevant policies or other documents (however described) issued by the Federal Reserve or the OCC; and

wholesale client has the meaning given in section 761G of the Act.

Note: By subsection 761H(1) of the Act, the operation of this instrument in relation to partnerships is affected by section 761F and subsection 769B(4) of the Act.

Commencement

This instrument takes effect on gazettal.

Notes to ASIC Class Order [CO 03/1101]

Note 1

ASIC Class Order [CO 03/1101] (in force under s911A(2)(l) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 03/1101]	23/12/2003 (<i>see</i> F2006B01492)	23/12/2003	
[CO 04/100]	4/2/2004 (<i>see</i> F2006B00914)	17/2/2004	-
[CO 04/213]	5/3/2004 (<i>see</i> F2006B01493)	10/3/2004	-
[CO 05/308]	17/5/2005 (<i>see</i> F2005L01187)	17/5/2005	-
[CO 12/572]	3/7/2012 (<i>see</i> F2012L01500)	3/7/2012	-
[CO 12/1266]	25/9/2012 (<i>see</i> F2012L01918)	25/9/2012	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Sch A	am. [CO 04/100]; [CO 04/213]; [CO 05/308] and [CO 12/572]
Sch B.....	am. [CO 04/213]
Sch C.....	am. [CO 04/100]; [CO 04/213]; [CO 05/308]; [CO 12/572] and [CO 12/1266]
Interpretation, note	ad. [CO 04/100]