

ASIC CLASS ORDER [CO 13/184]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes this class order under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Paragraph 1020F(1)(c) of the Act provides that ASIC may declare that Part 7.9 of the Act applies in relation to a class of persons as if specified provisions of that Part were omitted, modified or varied as specified in the declaration.

1. Background

Division 5B of Part 7.9 of the Act (and regulations made for the purposes of that Division) impose a reporting regime in relation to certain kinds of sales of “section 1020B products” (e.g. securities) made on a licensed market. The kinds of sales that are subject to these reporting obligations are sales that the seller intends that a securities lending arrangement will ensure that the section 1020B products can be vested in the buyer. These kind of sales are generally known as “covered short sales”.

ASIC Class Order [CO 10/29] (the *principal class order*) was made to address some issues that arose in relation to the reporting regime for covered short sales.

In November 2012, the *Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012* was enacted. Among other things, this amending Act inserted a definition of “CGS depository interest” in section 761A of the Act. A CGS depository interest is a depository interest, as defined in the *Commonwealth Inscribed Stock Act 1911*, that can be transferred through a licensed clearing and settlement facility.

A CGS depository interest is specifically included in the definition of “security” in section 761A of the Act. As a CGS depository interest is a security, it is also a section 1020B product. Accordingly, the reporting regime for covered short sales of section 1020B products on a licensed market will apply to covered short sales of CGS depository interests on a licensed market.

2. Purpose of the class order

The purpose of Class Order [CO 13/184] (the *amending class order*) is to address an unintended drafting consequence that arises because of the nature of a CGS depository interest.

There are numerous provisions in Division 5B of Part 7.9 of the Act (and regulations made for the purposes of that Division) that refer to section 1020B products in relation to a *listed entity* (or grammatical forms of that phrase). Examples includes references in subregulation 7.9.99(2) and 7.9.102(1A). As the reporting regime for covered short sales of section 1020B products applies to sales made on a licensed market, there has invariably been a listed entity to which the section 1020B product relates (for example, a quoted share on a licensed market in relation to a company that has been admitted to the official list of that market).

In the case of CGS depository interests, there will not be any listed entity to which that section 1020B product relates even though the CGS depository interests will be able to be traded (including by way of covered short sale) on a licensed market.

3. Operation of the class order

The amending class order amends the principal class order by notionally inserting a deemed interpretation provision in section 1020AA of the Act to remove any doubt that the reporting regime for covered short sales of CGS depository interests applies as Parliament intended even though there will not be any listed entity to which that section 1020B product relates.

4. Consultation

This amending class order is of a minor and technical nature. ASIC considered that consultation was unnecessary in the circumstances.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Class Order [CO 13/184]

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the class order

This class order amends ASIC Class Order [CO 10/29] (the *principal class order*) to remove uncertainty in relation to the reporting regime in Division 5B of Part 7.9 of the *Corporations Act 2001* (the *Act*) in relation to its application to CGS depository interests. The acronym “CGS” stands for Commonwealth Government Securities.

A CGS depository interest is a new kind of “security” for the purposes of Chapter 7 of the Act that will be able to be traded on a licensed financial market.

A CGS depository interest is to be regulated as a security for the purposes of the short selling reporting regime in the same way that other securities are regulated for the purposes of that reporting regime.

Unlike other kinds of securities that are able to be traded on a financial market, such as quoted shares of listed companies, the nature of a CGS depository interest is such that there is no listed entity to which the CGS depository interest relates.

The amending class order inserts a notional deeming provision into the short selling reporting regime to address the particular nature of a CGS depository interest so as to ensure that the short selling reporting regime in its application to a CGS depository interest operates in accordance with the policy of the Australian Government.

Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.