

ASIC Class Order [CO 07/428]

Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS

This instrument has effect under s741(1) and 1020F(1) of the *Corporations Act 2001*.

This compilation was prepared on 22 December 2009 taking into account amendments up to [CO 09/1084]. 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 — Subsections 741(1) and 1020F(1) — Declarations

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under subsections 741(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 07/428].

Commencement

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Modification of section 716

4. Chapter 6D of the Act applies to a person who offers securities under a disclosure document as if section 716 were modified or varied by:
 - (a) in subsection (2) omitting “A” (first occurring) and substituting:
“Subject to this section, a”; and
 - (b) after subsection (2) inserting the following:

Inclusion of historical geological data without consent

- (4) A disclosure document may include a historical geological report reference without meeting the requirements of subsection (2) where all of the following apply:

- (a) the historical geological report reference is included in a geological report (the *current report*) set out in the disclosure document;
- (b) the report (the *previous report*) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;
- (c) the previous report was not prepared in connection with the offer of securities under the disclosure document;
- (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering securities, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (ii) from whom the person offering securities, or an associate, has purchased the tenement; or
 - (iii) where the person offering securities is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
 - (iv) who is or is an associate of:
 - (A) the person offering the securities; or
 - (B) where the person offering the securities is not the issuer—the issuer; or
 - (v) where the securities are a legal or equitable right or interest in a share or a debenture:
 - (A) who is the issuer of the share or debenture, or an associate; or
 - (B) with whom the issuer of the share or debenture, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (C) from whom the issuer of the share or debenture, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the disclosure document.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be

complied with in relation to the first occurring reference provided that it is apparent that the subsequent references are from the same source.

Inclusion of trading data without consent

- (5) A disclosure document may include a trading data reference without meeting the requirements of subsection (2) where both of the following apply:
- (a) the trading data to which the trading data reference relates reflects trading on a prescribed financial market or on any of the following financial markets:
- (i) American Stock Exchange;
 - (ii) Borsa Italiana;
 - (iii) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (iv) Chicago Board of Trade;
 - (v) Euronext Amsterdam;
 - (vi) Euronext.liffe;
 - (vii) Euronext Paris;
 - (viii) Frankfurt Stock Exchange;
 - (ix) Hong Kong Stock Exchange;
 - (x) ICE Futures;
 - (xi) JSE;
 - (xii) Kansas City Board of Trade;
 - (xiii) London Metal Exchange;
 - (xiv) London Stock Exchange;
 - (xv) NASDAQ Stock Market;
 - (xvi) New York Board of Trade (including the New York Futures Exchange);
 - (xvii) New York Mercantile Exchange (including COMEX);
 - (xviii) New York Stock Exchange;
 - (xix) New Zealand Exchange;
 - (xx) Philadelphia Stock Exchange (including the Philadelphia Board of Trade);
 - (xxi) Singapore Exchange;
 - (xxii) SWX Swiss Exchange;
 - (xxiii) Tokyo Stock Exchange;
 - (xxiv) Toronto Stock Exchange;
- (b) the disclosure document states, close to the trading data reference:
- (i) the name of the person who prepared the trading data; and

- (ii) that the person who prepared the trading data has not consented to the use of the trading data reference in the disclosure document.

If the disclosure document includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

- (6) In this section:

geological report means a report dealing with the estimation, assessment or evaluation of a geological resource that has been prepared by a person who:

- (a) is a Member or Fellow of:
 - (i) the Australian Institute of Mining and Metallurgy; or
 - (ii) the Australian Institute of Geoscientists; and
- (b) has not less than five years' experience relevant to the estimation, assessment and evaluation of geological resources of the same kind.

historical geological report reference means a copy of, or extract from, or accurate representation of, a geological report.

trading data means quantitative data on the prices at which financial products are traded and the volume of that trading.

trading data reference means a copy of, or extract from, accurate representation or analysis of, trading data.”

Modification of section 1013K

- 5. Part 7.9 of the Act applies in relation to a responsible person as if section 1013K were modified or varied by:

- (a) in subsection 1013K(1) omitting “A” (first occurring) and substituting:

“Subject to this section, a”; and

- (b) after subsection 1013K(2) inserting the following subsections:

Inclusion of historical geological data without consent

- (4) A Product Disclosure Statement may include a historical geological report reference without meeting the requirements of subsection (1) where all of the following apply:
 - (a) the historical geological report reference is included in a geological report (the **current report**) set out in the Statement;
 - (b) the report (the **previous report**) to which the historical geological report reference relates is available for inspection or acquisition by any person, with or without payment of a fee, at or from:
 - (i) a governmental department, authority or agency of an Australian State or Territory or of the Commonwealth; or
 - (ii) ASX Limited;

- (c) the previous report was not prepared in connection with the offer of financial products to which the Statement relates;
- (d) the previous report was not prepared or commissioned by a person:
 - (i) with whom the person offering the financial products, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (ii) from whom the person offering the financial products, or an associate, has purchased the tenement; or
 - (iii) where the person offering the financial products is not the issuer:
 - (A) with whom the issuer, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (B) from whom the issuer, or an associate, has purchased the tenement; or
 - (iv) who is or is an associate of:
 - (A) the person offering the financial products; or
 - (B) where the person offering the financial products is not the issuer—the issuer; or
 - (v) where the financial products are warrants or legal or equitable rights or interests mentioned in subparagraph 764A(b)(ii) or 764A(ba)(ii) that are not warrants:
 - (A) who is the issuer of the warrants, rights or interests, or an associate; or
 - (B) with whom the issuer of the securities, managed investment products or interests in the managed investment scheme to which the warrants, rights or interests relate, or an associate, has shared an interest in a tenement that is covered by the current report; or
 - (C) from whom the issuer of the securities, managed investment products or interests in the managed investment scheme to which the warrants, rights or interests relate, or an associate, has purchased the tenement;
- (e) the current report states, close to the historical geological report reference:
 - (i) the name of the person who prepared the previous report; and
 - (ii) that the person who prepared the previous report has not consented to the use of the historical geological report reference in the Statement.

If the current report includes more than one historical geological report reference which relates to the previous report, paragraph (e) only has to be complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

Inclusion of trading data without consent

- (5) A Product Disclosure Statement may include a trading data reference without meeting the requirements of subsection (1) where both of the following apply:
- (a) the trading data to which the trading data reference relates reflects trading on a prescribed financial market or on any of the following financial markets:
- (i) American Stock Exchange;
 - (ii) Borsa Italiana;
 - (iii) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
 - (iv) Chicago Board of Trade;
 - (v) Euronext Amsterdam;
 - (vi) Euronext.liffe;
 - (vii) Euronext Paris;
 - (viii) Frankfurt Stock Exchange;
 - (ix) Hong Kong Stock Exchange;
 - (x) ICE Futures;
 - (xi) JSE;
 - (xii) Kansas City Board of Trade;
 - (xiii) London Metal Exchange;
 - (xiv) London Stock Exchange;
 - (xv) NASDAQ Stock Market;
 - (xvi) New York Board of Trade (including the New York Futures Exchange);
 - (xvii) New York Mercantile Exchange (including COMEX);
 - (xviii) New York Stock Exchange;
 - (xix) New Zealand Exchange;
 - (xx) Philadelphia Stock Exchange (including the Philadelphia Board of Trade);
 - (xxi) Singapore Exchange;
 - (xxii) SWX Swiss Exchange;
 - (xxiii) Tokyo Stock Exchange;
 - (xxiv) Toronto Stock Exchange;
- (b) the Statement states, close to the trading data reference:
- (i) the name of the person who prepared the trading data; and
 - (ii) that the person who prepared the trading data has not consented to the use of the trading data reference in the Statement.

If the Statement includes more than one trading data reference relating to trading data prepared by the same person, paragraph (b) only has to be

complied with in relation to the first occurring reference provided it is apparent that the subsequent references are from the same source.

(6) In this section:

geological report means a report dealing with the estimation, assessment or evaluation of geological resources that has been prepared by a person who:

(a) is a Member or Fellow of:

- (i) the Australian Institute of Mining and Metallurgy; or
- (ii) the Australian Institute of Geoscientists; and

(b) has not less than five years' experience relevant to the estimation, assessment and evaluation of geological resources of the same kind.

historical geological report reference means a copy of, or extract from, or accurate representation of, a geological report.

trading data means quantitative data on the prices at which financial products are traded and the volume of that trading.

trading data reference means a copy of, or extract from, accurate representation or analysis of, trading data.

warrant means a financial product:

(a) that is:

- (i) a derivative; or
- (ii) a financial product that would, apart from the effect of paragraph 761D(3)(c), be a derivative and is excluded by that paragraph only because:
 - (A) it is a security under paragraph (c) of the definition of **security** in section 761A; or
 - (B) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(b)(ii); or
 - (C) it is a legal or equitable right or interest mentioned in subparagraph 764A(1)(ba)(ii); and

(b) that is transferable.”.

Interpretation

6. In this instrument:

responsible person has the meaning given in section 1013A of the Act.

Notes to ASIC Class Order [CO 07/428]

Note 1

ASIC Class Order [CO 07/428] (in force under s741(1) and 1020F(1) 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 FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 07/428]	29/6/2007 (<i>see</i> F2007L02029)	29/6/2007	
[CO 09/1084]	21/12/2009 (<i>see</i> F2009L04660)	1/1/2010	Para 6 (<i>see</i> Table A)

Table of Amendments

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

Provision affected	How affected
Para 4(b).....	am. [CO 09/1084]
Para 5(b).....	am. [CO 09/1084]

Table A Application, saving or transitional provisions

ASIC Class Order [CO 09/1084]

Transitional

6. The variations made by this instrument do not apply to:

- (a) a disclosure document;
- (b) a Product Disclosure Statement;
- (c) a bidder's statement;
- (d) a target's statement,

that is dated before 1 January 2010.