

ASIC CLASS ORDER [CO 08/0405]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 08/0405] *Wholesale equity schemes: licensing relief for trustees - Amendment* under s911A(2)(l) of the *Corporations Act 2001* (the Act).

Section 911A(2)(l) provides that a person is exempt from the requirement to hold an Australian financial services (AFS) licence for a financial service they provide if the provision of the service is covered by an exemption specified by ASIC in writing and published in the Gazette.

1. Background

In May 2007, ASIC made Class Order [CO 07/74] *Wholesale equity schemes: licensing relief for trustees*. [CO 07/74] gives interim conditional relief until 31 December 2008 to trustees of wholesale equity schemes from the requirement to hold an AFS licence to provide wholesale equity financial services. Wholesale equity schemes are usually structured using a multiple unit trust structure with separate corporate trustees. [CO 07/74] applies where a fund manager that has an AFS licence and is a related body corporate of the trustees accepts responsibility for the conduct of the trustees.

ASIC granted interim relief under [CO 07/74] because of the disproportionate cost burden to trustees of wholesale equity schemes in obtaining an AFS licence. Interim relief enabled ASIC to further consider the appropriateness of the AFS licensing requirements to trustees and consult with industry on the appropriateness of granting ongoing relief.

2. Purpose of the class order

[CO 08/0405] extends the current interim conditional relief under [CO 07/74] so that it applies on an ongoing basis. Its purpose is to relieve wholesale equity schemes of the disproportionate cost burden of having to obtain AFS licences for multiple trustees where a licensed fund manager takes responsibility for and controls the operation of the scheme.

3. Operation of the class order

[CO 08/0405] amends [CO 07/74] to remove the expiry date of 31 December 2008. This gives trustees of wholesale equity schemes ongoing relief from the requirement to hold an AFS licence to provide wholesale equity financial services

when a fund manager that has an AFS licence and is a related body corporate of the trustees accepts responsibility for the conduct of the trustees.

4. Consultation

ASIC consulted on its proposal to grant ongoing relief to trustees of wholesale equity schemes from the requirement to hold an AFS licence to provide wholesale equity financial services by publishing Consultation Paper 82 *Wholesale equity venture capital schemes: Trustee licensing* in May 2007 and inviting public comments on that consultation paper. The submissions ASIC received expressed support for ASIC's proposal.