

# ASIC CLASS ORDER [CO 12/543]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Order [CO 12/543] under subsection 741(1) of the *Corporations Act 2001* (the **Act**).

Subsection 741(1) provides that ASIC may declare that Chapter 6D of the Act applies to all persons as if specified provisions were omitted, modified or varied as specified in the declaration.

### 1. Background

On 11 May 2010, ASIC made Class Order [CO 10/321] (the *principal class order*) to provide conditional relief to allow a listed body to offer “vanilla bonds” under:

- (a) a simplified prospectus, which has similar content requirements to a transaction-specific prospectus (see section 713 of the Act); and
- (b) a two-part prospectus, comprising a base prospectus that may be used for several different offers and a second part prospectus that relates to a particular vanilla bonds offer.

A “vanilla bond” is a debenture of a body that:

- has a fixed term of no more than 10 years, but may provide for redemption prior to the expiry of the fixed term in certain circumstances;
- has a floating rate of return that comprises a reference rate plus a fixed margin or a fixed rate of return;
- provides for interest to be paid periodically on specified dates;
- is not subordinated under the terms of the debenture to any debt owing to unsecured creditors of the body;
- is not convertible into another class of securities; and
- is issued at the same price as all other debentures issued under the prospectus for the debenture.

One of the conditions of the relief provided by the principal class order is a requirement (the *minimum subscription requirement*) that the aggregate size of the bond issue must be at least \$50 million if the offer is made on or before 12 May 2012.

The minimum subscription requirement will lapse after 12 May 2012 unless ASIC extends it.

In December 2011, the Australian Government released its discussion paper *Development of the retail corporate bond market: Streamlining disclosure and liability requirements*. One issue raised in the discussion paper is whether there should be a minimum subscription requirement for the proposed streamlined disclosure regime. In light of this discussion paper, ASIC decided to extend the expiry date of the minimum subscription requirement in Class Order [CO 10/321] by six months.

## **2. Purpose of the class order**

The purpose of the class order is to extend the minimum subscription requirement by a further six months given the release of the Australian Government discussion paper on developing the retail corporate bond market. The minimum subscription requirement will lapse on 12 November 2012 unless ASIC renews it.

The other purpose of the class order is to ensure that bodies who offer vanilla bonds under the modified disclosure rules refer in the prospectus to the current ASIC consumer website – MoneySmart – which has replaced the former FIDO website, so as to encourage retail investors to obtain a copy of the guide for investing in retail corporate bonds from the MoneySmart website.

## **3. Operation of the class order**

This class order amends the principal class order by, in notional section 713A of the Act:

- (a) updating the reference to ASIC's former FIDO website to ASIC's MoneySmart website; and
- (b) extending the minimum subscription requirement of at least \$50 million until 12 November 2012.

## **4. Statement of Compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This legislative instrument 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* because it does not engage any of the applicable rights or freedoms.

## **5. Consultation**

ASIC undertook public consultation before making Class Order [CO 10/321]. ASIC did not undertake public consultation before making Class Order [CO 12/543] because the changes made by the class order are of a minor and/or interim nature.