**ASIC CLASS ORDER [CO 12/1110]**

**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 12/1110] under paragraph 911A(2)(l) of the *Corporations Act 2001* (the ***Act***).

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

**1. Background**

ASIC Class Order [CO 04/1570] exempts foreign companies from the need to hold an Australian financial services licence where they are dealing in foreign exchange contracts on similar terms to the exemption in former regulation 7.6.01(1)(ma) of the *Corporations Regulations 2001* (the ***Regulations***).

ASIC Class Order [CO 12/574], which took effect on 3 July 2012, purported to revoke Class Order [CO 04/1570]. However, there is doubt about whether that purported revocation had full legal effect because the terms of the relief in Class Order [CO 04/1570] may have continued to have effect because of Class Order [CO 05/1270].

Class Order [CO 05/1270] was made by ASIC to remove doubt about the operation

of a series of relevant class orders, including Class Order [CO 04/1570], made in December 2004. Class Order [CO 05/1270] refers to these class orders as “eligible instruments”. As these eligible instruments were not gazetted before 1 January 2005, there was some doubt about whether the *Legislative Instruments Act 2003* in effect had rendered them inoperative from that date.

**2. Purpose of the class order**

The purpose of this class order is to perfect the revocation of [CO 04/1570].

The relief contained in Class Order [CO 04/1570] operated in addition to a related exemption in former regulation 7.6.01(ma) of the Regulations and was made on similar terms. Regulation 7.6.01(1)(ma) has since been repealed and it is considered no longer appropriate to continue the existence of the relief in the class order.

**3. Operation of the class order**

This class order perfects the revocation of Class Order [CO 04/1570] by amending the definition of “eligible instrument” in Class Order [CO 05/1270] so as to remove the reference to Class Order [CO 04/1570].

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

**5. Consultation**

ASIC did not undertake any specific consultation before making this class order because it is of a minor and machinery nature.