

ASIC CLASS ORDER [CO 13/1362]

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 13/1362] 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.

A condition of the relief provided by the principal class order, as originally made, was a requirement (the *minimum subscription requirement*) that the aggregate size of the bond issue must be at least \$50 million if the offer is made on or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 expiry date of the minimum subscription requirement was subsequently extended to 12 November 2013. The minimum subscription requirement will currently lapse after 12 November 2013 unless ASIC further extends it.

ASIC has previously extended the expiry date of the minimum subscription requirement pending any further regulatory developments relating to retail corporate bonds. As no such developments have occurred since the principal class order was last amended, ASIC considers it appropriate to extend the expiry date of the minimum subscription requirement for a further six months.

2. Purpose of the class order

The purpose of Class Order [CO 13/1362] (the *amending class order*) is to extend the minimum subscription requirement in the principal class order by a further six months pending any further regulatory developments relating to retail corporate bonds.

3. Operation of the class order

This amending class order amends the principal class order by, in notional section 713A of the Act, extending the minimum subscription requirement of at least \$50 million until 12 May 2014.

4. Consultation

ASIC undertook public consultation before making the principal class order. ASIC did not undertake public consultation before making this amending class order because the changes made are of a minor and/or interim nature.

Statement of Compatibility with Human Rights

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

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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*.

Overview of the legislative instrument

The purpose of this legislative instrument is to amend ASIC Class Order [CO 10/321] (the *principal class order*). The principal class order provides conditional relief to allow a listed body to offer “vanilla bonds” under a simplified prospectus; and 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 condition of the relief provided by the principal class order is a requirement that the aggregate size of the bond issue must be at least \$50 million if the offer is made on or before 12 November 2013.

This legislative instrument amends that condition of the relief so that the aggregate size of the bond issue must be at least \$50 million if the offer is made on or before 12 May 2014.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.