**EXPLANATORY STATEMENT for
ASIC Corporations (Unsolicited Offers—Foreign Bids) Instrument 2015/1070.**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070 under section 1020F of the *Corporations Act 2001* (the Act).

Section 1020F of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

### Background

Division 5A of Part 7.9 of the Act regulates the making of unsolicited offers to purchase financial products. The provision requires that unsolicited offers set out in a clear, concise and effective manner, certain information about:

1. the market price of the financial product; or
2. if applicable:
	1. a fair estimate of the value of the financial product as at the date of the offer; and
	2. an explanation of the basis on which the estimate was made.

The value of off market financial products can be uncertain if there is no independently verifiable price.

The purpose of Division 5A Part 7.9 (**Division**) is to provide a disclosure regime to ensure adequate investor protections in situations where an investor may not know the value of their financial products. The Division is primarily (but not solely) aimed at stopping 'low ball offers' being made to unsophisticated investors.

### Purpose of the instrument

The purpose of ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070 is to facilitate international comity by ensuring Australian legislation does not unreasonably impede a bona fide and otherwise lawful takeover offer for a foreign company, for example where a foreign company which may only have a small percentage of Australian shareholders is regulated in foreign jurisdictions with comparable regulatory requirements to Australia.

Whilst the Division specifically prescribes the way in which unsolicited offers to purchase a financial product must be made, Paragraph 1019D(1)(d) contains provisions which carve out the requirements of the Division for offers:

1. to buy back shares under a buy-back authorised under s257A;
2. made under a compromise or arrangement under Part 5.1;
3. made under an off-market bid; or
4. to compulsorily acquire or buy out securities under Chapter 6A.

The Division captures unsolicited offers made in connection with a takeover bid for a foreign company which are made or received in Australia. In such circumstances offers made to Australian holders of securities in a foreign company under a foreign takeover bid will, without relief, also need to be accompanied by an offer document in accordance with the Division.

Foreign takeover bids regulated in certain jurisdictions are likely to be accompanied by adequate disclosure because these jurisdictions have takeover regimes that offer comparable levels of disclosure and investor protection to that provided in Australia. As such, these regulated foreign takeover bids should not be subject to the disclosure provisions in Division 5A of Part 7.9 of the Act.

### Operation of the instrument

ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070 provides an exemption from Division 5A of Part 7.9 of the Act in relation to an unsolicited offer to purchase securities of a foreign company where the offer is made under a foreign takeover bid or foreign scheme of arrangement, which the person reasonably believes is made in accordance with the relevant regulatory requirements.

The ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070 exempts listed bodies and their officers from compliance with Division 5A of Part 7.9 of the Act in relation to an unsolicited offer to acquire securities of a foreign company where the unsolicited offer is one of a number of offers made under an arrangement or compromise that is regulated by or under a law that is in force or in a part of an eligible foreign country.

In order to rely on relief afforded under ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070, a person must meet the condition which stipulates that reasonable steps must be taken to ensure that the regulated foreign takeover bid or foreign scheme is carried out in accordance with the relevant regulatory requirements. The exemption is not available to a person who does not take these steps.

The definition of foreign takeover bid or foreign scheme must be satisfied in order to rely on the relief afforded under ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070.

### Consultation

The ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070 was the subject of public consultation in Consultation Paper 234 *Remaking ASIC class orders on takeovers and schemes of arrangement* (CP 234). CP 234 was published in August 2015 and is available on ASIC's website.

ASIC has determined that a Regulatory Impact Statement is not necessary for this instrument as it is a remaking of the previous Class Order 05/850, which was determined to be operating effectively and efficiently, and has thus been remade without significant changes.

**Statement of Compatibility with Human Rights**

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

**ASIC Corporations (Unsolicited Offers – Foreign Bids) Instrument 2015/1070**

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**

The purpose of this instrument is to provide relief from Division 5A of Part 7.9 of the Act to persons who make unsolicited offers to Australian residents in connection with any takeover bid for a foreign company regulated by or under a law or other rules in force, or applies in, or in a part of these foreign jurisdictions with comparable regulatory requirements to Australia.

**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.

**Australian Securities and Investments Commission**