

**Australian Securities and Investments Commission  
Corporations Law - Paragraph 601QA(1)(b) - Declaration and Variation**

Pursuant to paragraph 601 QA(1)(b) of the Corporations Law (Law) the Australian Securities and Investments Commission (ASIC) hereby declares that the provisions of Division 11 of Part 11.2 of the Law apply in relation to the persons mentioned in Schedule A as if those provisions were modified or varied as follows:

1. Replace sections 1455, 1456, 1457 and 1458 with the following:

"1455(1) If the trustee in relation to the prescribed interests decides not to lodge a registration application in relation to the undertaking naming itself as the proposed responsible entity, it may:

- (a) convene a meeting of the holders of the prescribed interests to:
  - (i) choose a proposed responsible entity for the purpose of making a registration application; or
  - (ii) decide that the undertaking is to be wound up; or
- (b) nominate, as the proposed responsible entity, a related body corporate of the trustee that has given its consent in writing to the nomination and given notice of the nomination to ASIC.

1455(IA) A resolution passed under sub-paragraph (1)(a)(i) may direct the proposed responsible entity to lodge with the registration application a compliance plan that provides for scheme property to be held by a person other than the responsible entity, or a person that is not related to the responsible entity, as the responsible entity's agent.

1455(1B) If the trustee makes a nomination under paragraph 1455(1)(b) and the nominee does not become a nominee to which paragraph 1460(1)(c) applies within 3 months of the notice of the nomination being lodged, the trustee must within that 3 month period decide whether it will lodge a registration application in relation to the undertaking naming itself as the proposed responsible entity. The trustee must lodge a notice of its decision with ASIC.

1455(1C) If the trustee makes a nomination under paragraph 1455(1)(b), the trustee must:

- (a) give Voluntary Investors prior notice of the proposal to appoint the nominee as the proposed responsible entity. The period of notice must be not less than 21 days from the date the notice is sent and must be a period which the trustee reasonably believes is sufficient to enable Voluntary Investors to request their withdrawal from the undertaking; and
- (b) include in the notice sent to Voluntary Investors a statement of any right of

withdrawal by a Voluntary Investor from the undertaking and with the notice a form on which a request for withdrawal can be easily made (whether by ticking a box or otherwise).

1455(1D) If the trustee makes a nomination under paragraph 1455(1)(b), the trustee must either:

- (a) upon or before making the nomination, certify to ASIC that:
  - (i) the trustee holds more than 50% by value of the prescribed interests for beneficiaries who are not Voluntary Investors; and
  - (ii) if a proposal to appoint the nominee were to be put to a meeting of holders in accordance with sections 1069A to 1069C of the old Law (with only such modifications as may be necessary), the number of votes which the trustee would cast in favour of the proposal (in accordance with its duties to beneficiaries in relation to the interests to which the votes relate) would exceed 50% of the votes that could be cast at such a meeting; and
  - (iii) the trustee believes the appointment of the proposed responsible entity is not adverse to the best interests of the holders; or
- (b) in the notice sent to Voluntary Investors, allow them by ticking a form accompanying the notice to request a vote on the nominee being the proposed responsible entity which vote may, at the trustee's discretion, be conducted as a postal vote or put to a meeting of holders; or
- (c) in the notice sent to Voluntary Investors, advise them that they will be allowed to vote on the nominee by a postal vote or at a meeting of holders.

1455(IE) The notice to Voluntary Investors must:

- (a) contain the information about the choice of the nominee that would be required under paragraph 7.12.15(1)(g) of the Regulations of the old Law if the notice were a notice of a meeting to consider that choice;
- (b) state prominently a reply paid address of the trustee to which the withdrawal request referred to in subsection (1C) and, if paragraph (1D)(b) applies, the request for a vote, may be sent; and
- (c) if paragraph (1D)(b) applies, state prominently that if:
  - (i) holders of the prescribed interests who together hold at least 5% of the total value of the interests held by holders; or

(ii) at least 100 holders of the prescribed interests,

who would be entitled to vote if the proposal were put to a meeting under paragraph 1455(1)(a), ask for a vote on the choice of the nominee as the proposed responsible entity by giving written notice received by the trustee within 21 days from the date the notice is sent, the trustee will arrange a postal vote or convene a meeting to vote.

1455(1F) The trustee must as soon as practicable give effect to a withdrawal request by a Voluntary Investor in accordance with the notice given to them.

1455(1G) The trustee must arrange for a postal vote or, if the trustee chooses, convene a meeting to vote if required in accordance with the notice as soon as practicable.

1455(1H) The trustee may arrange for a postal vote or, if the trustee chooses, convene a meeting to vote on the choice of the nominee as the proposed responsible entity.

1455(1J) If there is a postal vote under subsection (1G) or (1H):

- (a) a voting paper must be sent to each holder of the prescribed interests which states a reply paid address of the trustee to which the voting paper may be sent; and
- (b) the trustee must notify the holders of the prescribed interests in, or in a document accompanying, the voting paper that:
  - (i) the nominee will be the proposed responsible entity if the nominee is chosen as the proposed responsible entity by votes received by the trustee by holders of prescribed interests that would be eligible to vote at a meeting under paragraph 1455(1)(a) holding a majority in value (as determined in accordance with subsection 1069A(5) of the old Law) of all the holders of the prescribed interests; and
  - (ii) only votes received by the trustee within 28 days after the issue of the voting paper will be counted.

1455(1K) If there is a postal vote under subsection (1G) or (1H), the voting paper must be accompanied by a notice that would have complied with the covenant required by paragraph 7.12.15(1)(g) of the Regulations of the old Law if the proposal were put as a proposed resolution to a meeting of holders of the prescribed interests.

1455(1L) In this section "Voluntary Investor" means a person:

- (a) who invests, or on whose behalf money is invested, with the trustee pursuant to a prospectus or other disclosure document issued in relation to the prescribed interests; or

- (b) if money is already held by the trustee for that person:
  - (i) who directs the trustee to apply the money to the prescribed interests; or
  - (ii) whose specific consent is required prior to the trustee applying the money to the prescribed interest,

where the trustee has no authority to invest or deal with that money in any other way.

1455(2) If a proposed responsible entity is chosen under this section, it does not affect the trustee continuing in office until registration.

1455(3) If a meeting is convened under paragraph (1)(a), the trustee must lodge with ASIC a notice that the meeting has been convened and a notice setting out the outcome of the meeting.

1455(4) If at a meeting convened under paragraph (1)(a), the holders of prescribed interests neither choose a proposed responsible entity nor decide that the undertaking is to be wound up, the trustee may apply to the Court for an order directing it to wind up the undertaking.

1455(5) The trustee must ensure that the undertaking is wound up in accordance with any deed or other agreement in relation to the prescribed interests and any orders under subsection 1459(2) if:

- (a) the holders of prescribed interests decide at a meeting convened for the purpose of paragraph (1)(a), that the undertaking is to be wound up; or
- (b) the Court makes an order directing the trustee to wind up the undertaking pursuant to an application under subsection (4)."

2. Replace subsection 1460(1) with the following:

"1460(1) This section sets out the powers of:

- (a) the trustee if that trustee decides to lodge a registration application in relation to the undertaking naming itself as the proposed responsible entity;
- (b) a body chosen by the holders of the prescribed interests as the proposed responsible entity at a meeting convened under paragraph 1455(1)(a); or
- (c) a body that is a nominee under paragraph 1455(1)(b) if the trustee that nominated the nominee has complied with section 1455 in relation to the nomination and a postal vote or a vote at a meeting was either not required or was held and the nominee was chosen as the proposed responsible entity by majority on such vote

and the trustee has lodged with ASIC a notice of the choice."

3. Replace paragraph 1460(3)(b) with the following paragraphs:

- "(b) if the modification removes from the deed a provision that was included to satisfy:
  - (i) the requirements of Division 5 of Part 7.12 of the old Law or a previous law corresponding to that Division; or
  - (ii) any requirements of the NCSC or another person authorised to approve deeds under a previous law corresponding to that Division; or
  - (iii) the conditions of any instrument under subsection 1069(3) or 1084(2) of the old Law or under a previous law corresponding to those subsections; or
- (c) if the modification is incidental to the modifications permitted by paragraphs (a) or (b); or
- (d) if the body reasonably considers the modification is in the best interests of holders of the prescribed interests, is fair as between holders and will not adversely affect holders' rights; or
- (e) if the modification inserts in the deed a right of the responsible entity to be paid fees out of scheme property not exceeding fees that the responsible entity is at the date of registration authorised to charge under provisions of State or Territory laws relating to the operation of common funds."

4. In section 1461 replace "paragraph 1456(2)(b), 1457(1)(a) or 1460(6)(b)" with "section 1455 or paragraph 1460(6)(b)" and at the end of the section add:

"except that at a meeting under section 1455, paragraphs 1069A(2)(c) and (d) do not apply and a nominee may be chosen as the proposed responsible entity by holders of a majority in value of all the prescribed interests that being eligible to vote at the meeting do vote (whether in person or by proxy) on the choice".

And under paragraph 601QA(1)(b) of the Law ASIC hereby varies:

- (a) ASIC Class Order [98/59] by inserting, in Schedule A, "(other than a common fund)" after "undertaking";
- (b) ASIC Class Order [98/2159] by:
  - (i) deleting the words "(second appearing)"; and
  - (ii) inserting after the words "ASIC Class Order [00/4]" the words "or [00/1067]";
- (c) ASIC Class Order [99/374] by:

- (i) inserting, in Schedule A the words "(other than a common fund)" after "undertaking"; and
  - (ii) deleting from the first paragraph and from Schedule A the words "(second appearing)";
- (d) ASIC Class Order [99/840] by:
- (i) deleting from the first paragraph and from Schedule A the words "(second appearing)"; and
  - (ii) deleting the words "ASIC Class Order 98/59 or 98/1807" and substituting the words "ASIC Class Order [98/59], [98/1807] or [00/1067]"; and
- (e) ASIC Class Order [00/04] by deleting the words "either ASIC Class Order [98/59] or ASIC Class Order [98/1807]" and substituting the words "any of ASIC Class Order [98/59], [98/1807] or [00/1067]".

#### SCHEDULE A

The trustee, the members, and any person nominated as the proposed responsible entity of, a common fund other than a common fund which is:

- (a) an undertaking to which ASIC Class Order [98/1807] applies;
- (b) Perpetual's Cash Management Fund established by deed dated 21 October 1992;
- (c) Perpetual's Australian Share Fund established by deed dated 21 December 1992;
- (d) Perpetual's Fixed Interest Securities Share Fund established by deed dated 21 December 1992;
- (e) Perpetual's Property Securities Share Fund established by deed dated 21 December 1992; or
- (f) Perpetual's Term Deposit Fund established by deed dated 6 July 1995.

Dated the 25th day of May 2000

Signed by Brendan Byrne  
as delegate of the Australian Securities and Investments Commission