

ASIC Class Order [CO 00/199]

Trustee companies' common funds

This instrument has effect under paragraph 601QA(1)(b) and subsection 741(1) of the *Corporations Act 2001*.

This compilation was prepared on 4 October 2005 taking into account amendments up to [CO 02/298].

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 601QA(1)(b) and Subsections 1084(2) and 741(1) — Revocation, Modification and Exemption

Pursuant to paragraph 601QA(1)(b) and subsection 1084(2) of the *Corporations Act 2001* (the “Act”) the Australian Securities and Investments Commission (ASIC) revokes ASIC Class Order [98/77] dated 10 July 1998 with effect from the time immediately before the CLERP Commencement Date.

And pursuant to paragraph 601QA(1)(b) of the Act ASIC hereby declares, with effect from the CLERP Commencement Date, that Chapter 5C applies in the case specified in Schedule A to each person specified in Schedule B (the Trustee) and to each person who operates or is a member of a scheme of the type described in Schedule A as if the following provisions were omitted, modified or varied as specified in this declaration.

1. Replace section 601FL with the following:

“601FL Retirement of responsible entity

The responsible entity of a registered scheme must withdraw from the operation of the scheme, except as provided in this section, upon the occurrence of any of the following circumstances:

- (a) where the responsible entity ceases to carry on business;
- (b) on the responsible entity being placed in liquidation, other than for the purposes of amalgamation, reconstruction or a purpose of a similar kind;
- (c) where a receiver or receiver and manager is appointed in relation to the property in which the responsible entity has a beneficial interest and is not removed or withdrawn within 30 days of the appointment;
- (d) if the responsible entity is not, or is no longer, authorised by an Act or state Act to hold trust moneys in a common fund;

- (e) if the scheme is deregistered;
- (f) on the suspension or revocation of the responsible entity's authorisation to operate the scheme.

Upon withdrawal, in accordance with the constitution of the scheme and any orders under subsection 601NF(2), the responsible entity must realise and convert into cash all investments held in the scheme, as soon as reasonably practicable having due regard to the need to realise the reasonable value of the investments so far as the circumstances permit, and distribute the proceeds of such realisation in a manner authorised by the constitution of the scheme after payment of all appropriate costs and provision for liabilities.”

- 2. Omit section 601FM and subsections 601FQ(1), (2), (3) and (4).
- 3. In subsection 601FQ(5) omit “,if” and paragraphs (a) and (b).
- 4. In subsection 601GC(1) delete all the words after “new” and substitute the following:

“constitution by the responsible entity if the responsible entity reasonably believes that the changes are in the best interests of members and not inconsistent with its duties to any member as a member of the scheme and provides ASIC with a certificate to that effect when lodging a copy of the modification or the new constitution under subsection (2).”; and

- 5. Modify section 601LB by substituting the following as replacement section 207:

“Section 207 Purpose

The rules in this Chapter, as they apply to a registered scheme, are designed to protect the interests of the scheme's members as a whole, by requiring with respect to the giving of financial benefits to the responsible entity or its related parties that come out of scheme property or that could endanger those interests that such benefits be given only with member approval or where the responsible entity is of the opinion that the giving of the financial benefit is in the best interests of members and provides ASIC with a certificate to that effect before the financial benefit is given.”

- 6. Modify section 601LC by deleting the full stop at the end of replacement paragraph 208(1)(e) and substituting the following:

“; or

- (f) the responsible entity must reasonably believe that the giving of the financial benefit is in the best interests of members and

not inconsistent with its duties to any member as a member of the scheme and must provide ASIC with a certificate to that effect before the financial benefit is given”.

7. Omit sections 601NB and 601NC and paragraphs 601NE(1)(b) and 601NE(1)(d).

And pursuant to subsection 741(1) of the Act ASIC hereby exempts the Trustee from subsection 723(1) of the Act in the case specified in Schedule C with effect from the CLERP Commencement Date.

SCHEDULE A

The operation of a managed investment scheme that is a common fund, other than a common fund the value of the assets of which comprise, or have been offered or held out as comprising, 20% or more in estates in land. For this purpose disregard interests as mortgagee, and interests arising from enforcement of rights as a mortgagee.

SCHEDULE B

The trustee of a common fund mentioned in Schedule A.

SCHEDULE C

An application for interests in a common fund mentioned in Schedule A that is not made pursuant to:

- (i) a disclosure document issued in relation to the interests;
- (ii) a direction to the Trustee to apply the money to the interests if the money is already held by the Trustee for the person giving the direction; or
- (iii) a person's specific consent if money is already held by the Trustee for the person and the person's specific consent is required prior to the Trustee applying the money to the interest,

where the Trustee has no authority to invest or deal with those moneys, except as part of the common fund.

Interpretation

In this instrument “CLERP Commencement Date” means the time at which Schedule 1 of the Corporate Law Economic Reform Program Act 1999 commences.

Note: the CLERP Commencement Date is expected to be 13 March 2000.

Notes to ASIC Class Order [CO 00/199]

Note 1

ASIC Class Order [CO 00/199] (in force under paragraph 601QA(1)(b) and subsection 741(1) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 00/199]	17/2/2000	13/3/2000	-
[CO 00/1087]	20/5/2000	20/5/2000	-
[CO 02/298]	8/3/2002	11/3/2002	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Para 1	am. [CO 02/298]
Para 4	rs. [CO 00/1087]
Para 6	am. [CO 00/1087]
Class order	am. [CO 02/298]