**Australian Securities and Investments Commission**

**Corporations Act 2001—Paragraphs 1020F(1)(a) and 1020F(1)(c)—Exemption and Declaration**

**Enabling legislation**

1. The Australian Securities and Investments Commission (***ASIC***) makes this instrument under paragraphs 1020F(1)(a) and 1020F(1)(c) of the *Corporations Act 2001* (the ***Act***).

**Title**

2. This instrument is ASIC Class Order [CO 13/1621].

**Commencement**

3. This instrument commences on the date it is registered under the *Legislative*

*Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (***FRLI***) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of ***register***). The FRLI may be accessed at [http://www.frli.gov.au/.](http://www.frli.gov.au/)

**Exemption**

4. A responsible entity of a registered scheme does not have to comply with subsection 1016A(2) of the Act in relation to the issue of an interest in the scheme to a person (***acquirer***) in response to an electronic application made to the responsible entity on behalf of the acquirer through mFund.

5. The exemption in paragraph 4 applies where:

(a) the application made through mFund contained or was accompanied by an electronic confirmation that a Product Disclosure Statement for the interest with a specified date has been given to the acquirer by a financial services licensee or an authorised representative of a financial services licensee; and

(b) the Product Disclosure Statement referred to in the confirmation has been prepared by the responsible entity and was not defective as at the time when the application was made; and

(c) the responsible entity has no reason to believe that the requirements of the ASX Operating Rules and ASX Settlement Operating Rules have not been satisfied in relation to the application and the confirmation; and

(d) the responsible entity reasonably believes that the Product Disclosure Statement referred to in the confirmation was available free of charge on the website of ASX as at the time the application was made; and

(e) either:

(i) the operation of mFund by ASX or by ASX Settlement and ASX is authorised by an Australian market licence; or

(ii) mFund is the subject of an exemption under section 791C of the Act.

**Conditions**

6. A responsible entity that relies on the exemption in paragraph 4 must:

(a) within 5 business days after the issue of the interest notify the acquirer in writing that:

(i) there is a Product Disclosure Statement with the date specified in the electronic confirmation in relation to the acquirer’s application that has information about the interest that should have been given to the acquirer; and

(ii) if the acquirer has not received that Product Disclosure Statement, the acquirer should inform the responsible entity, and the acquirer may obtain an electronic or paper copy from the responsible entity free of charge; and

(b) notify ASX in writing within 10 business days if it has reason to believe that a person who acquired an interest in the scheme as a retail client as a result of an application through mFund had not been given, before making the application, the Product Disclosure Statement for the interest that was specified in the electronic confirmation in relation to the application; and

(c) keep for 7 years:

1. records demonstrating that it has complied with the requirements of subparagraph (a); and
2. a copy of all applications received through mFund; and

(iii) a record of any statement by an acquirer that states or implies that the acquirer was not given, before applying through mFund, the Product Disclosure Statement that was specified in the electronic confirmation in relation to the acquirer’s application.

**Declaration**

7. Part 7.9 of the Act applies in relation to a financial services licensee who, or whose authorised representative, transmits an electronic application for the issue of an interest in a registered scheme through mFund as if that Part were modified or varied by, after subsection 1016A(2), inserting:

“(2A) A financial services licensee must:

(a) not transmit an electronic application for the issue of an interest in a registered scheme to a person unless; and

(b) ensure that an authorised representative of the financial services licensee does not transmit such an application unless the financial services licensee has done all things reasonably necessary to ensure that;

each of the following are satisfied:

(c) the financial services licensee or its authorised representative (as applicable) has:

(i) given the person a Product Disclosure Statement for the interest; or

(ii) been notified in writing by another financial services licensee or authorised representative (each the ***second*** ***providing licensee or representative***) that the second providing licensee or representative has given the person a Product Disclosure Statement for the interest;

(d) the date of the Product Disclosure Statement is specified in an electronic statement forming part of or accompanying the application;

(e) the date of the Product Disclosure Statement is the date of the most recent Product Disclosure Statement for the interest that is available on the website of ASX Limited as at the time the application is made.

Note: A person who offers to arrange for the issue of an interest in a registered scheme to a person as a retail client is required to give a Product Disclosure Statement to the person before making the offer: section 1012B.

(2B) Subsection (2A) does not apply where the financial services licensee or its authorised representative believes on reasonable grounds that an issue is not a restricted issue.”.

**Interpretation**

8. In this instrument:

***ASX*** means ASX Limited (ACN 008 624 691).

***ASX Settlement*** means ASX Settlement Pty Limited (ACN 008 504 532).

***ASX Settlement Operating Rules*** mean the operating rules of the clearing and settlement facility operated by ASX Settlement on 20 December 2013.

***ASX Operating Rules*** means the operating rules of the financial market operated by ASX on 20 December 2013.

***authorised representative*** has the meaning given by section 761A of the Act.

***defective*** has the same meaning as in subsection 1016A(1) of the Act.

***mFund*** means the facility that is operated by ASX or by ASX Settlement and ASX and that is called, or has been called, the “mFund Settlement Service”.

***retail client*** has the meaning given by section 761A of the Act.

Dated this 20th day of December 2013

Signed by Stephen Yen PSM

as a delegate of the Australian Securities and Investments Commission