**Australian Securities and Investments Commission**

**Corporations Act 2001—Paragraphs 601QA(1)(a), 601QA(1)(b), 926A(2)(a), 992B(1)(a), 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 601QA(1)(a), 601QA(1)(b), 926A(2)(a), 992B(1)(a), 1020F(1)(a) and 1020F(1)(c) of the *Corporations Act 2001* (the ***Act***).

**Title**

1. This instrument is ASIC Class Order [CO 15/52].

**Commencement**

1. This instrument commences on the day after 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*, section 4 (definition of ***register***). The FRLI may be accessed at <http://www.frli.gov.au/>.

**Exemption—Registration of a managed investment scheme, holding an Australian financial services licence and financial product disclosure**

1. A Promoter and a Manager of a greyhound scheme do not have to comply with:

(a) subsection 911A(1) of the Act for the provision of a financial service in relation to an interest in the scheme; and

(b) subsection 601ED(5) of the Act in relation to the operation of the scheme; and

(c) Part 7.9 of the Act, other than section 1018A, in relation to a financial product that is an interest in the scheme.

*Where the exemption applies*

1. The exemptions in paragraph 4 only apply to a Promoter in relation to a greyhound scheme if the Promoter:

(a) has not raised more than $150,000 from members of the scheme; and

(b) has not raised more than $2 million within any 12 month period from members of greyhound schemes in relation to which schemes the Promoter:

(i) has relied on any of the exemptions in paragraph 4; or

(ii) was required to give a Product Disclosure Statement under the Act; and

(c) has received written notice from the Controlling Body for the scheme that they may make offers of interests in the scheme.

*Conditions*

6. A person relying on subparagraph 4(b) or (c) in relation to a greyhound scheme must:

(a) comply with the Applied Rules applying to them in relation to the scheme; and

(b) if they are the Manager, retire only in accordance with the scheme agreement or on removal by the Controlling Body; and

(c) if they are the Promoter, give the Controlling Body a copy of each of the following:

(i) the scheme agreement and any amendments to that agreement – promptly after the agreement or amendments are made; and

(ii) any document under which the Promoter offers an interest in the scheme – before it is first given to a person to whom an offer is made; and

(iii) any advertisement of, or other statement that the Promoter publishes that directly or indirectly refers or draws attention to, an offer of an interest in the scheme or participation in ownership of any greyhound whether the subject of the scheme or not – promptly after the publication; and

(d) provide any assistance and information in relation to the affairs of the scheme or their affairs to ASIC in accordance with any request of ASIC in writing; and

(e) if they are the Manager, ensure that within 3 months after the end of each financial year, each person who was a member of the scheme during the financial year is given:

(i) a statement of any transactions affecting the person’s interest in the scheme, including the person’s contributions, expenses borne by the person or from entitlements of the person and winnings distributed to the person and a statement of any amounts held for the person at the beginning and end of the financial year; and

(ii) a copy of the financial statements for the scheme for the financial year; and

(f) not offer to issue, issue or sell any interest in the scheme to a person as a retail client unless the person was given a disclosure statement at or before the time any offer to issue was made to the person, and, if there is no offer to issue made to the person, before the issue or sale was made to the person; and

(g) if they are the Promoter, make an application for registration of the scheme with the Controlling Body under its rules within a reasonable time after all the interests in the scheme have been issued; and

(h) if they are the Promoter, hold:

(i) all application money received from people applying for an interest in the scheme; and

(ii) all other money paid by them in relation to the scheme before the scheme is registered with the Controlling Body under its rules;

on trust for the applicants in a trust account until:

(iii) the scheme is registered with the Controlling Body under its rules; or

(iv) the money is returned to the applicants; or

(v) interests in the scheme are issued to the applicants and the money is applied to pay the amount agreed by each applicant for their ownership interest in the greyhounds to which the scheme relates; and

(i) if they are the Promoter, represent to each person offered an interest in the scheme in the scheme agreement or at or before the time the person is given the scheme agreement that they will deal with money referred to in subparagraph (h) in the manner described in subparagraph (h); and

(j) if they are the Promoter and either:

(i) the scheme is not registered with the Controlling Body under its rules within 6 months after the time of the first application for interests in the scheme; or

(ii) the Controlling Body notifies the Promoter that it will not register the scheme;

return the money referred to in subparagraph (h) and any interest earned on that money to each applicant within 10 days, subject to the applicant transferring their ownership interest in the greyhounds to which the scheme relates to the Promoter.

*Persons acting on behalf Promoters or Managers*

7. A person does not have to comply with subsection 911B(1) of the Act where both of the following apply:

(a) the person is providing a financial service on behalf of a Promoter or a Manager;

(b) if the Promoter or Manager provided the financial service, they would not need an Australian financial services licence because the provision of the service would be exempt under subparagraph 4(a).

**Exemption—Hawking restrictions**

8. A Promoter relying on paragraph 4 in relation to a greyhound scheme does not have to comply with section 992AA of the Act.

*Where the exemption applies*

9. The exemption in paragraph 8 only applies to an offer by the Promoter of an interest in the scheme for issue or sale where:

(a) the offer (***unsolicited offer***) is made to a person (***unsolicited offeree***) in the course of, or because of, an unsolicited meeting on the day of a greyhound race at a greyhound racing venue or at a place where bets on greyhound races can be lawfully placed; and

(b) the meeting is not prohibited by the occupier of the venue or place at the relevant time; and

(c) the offer includes a clear statement that the Promoter will not issue or sell an interest in the scheme to the unsolicited offeree unless the unsolicited offeree initiates further discussions with the Promoter after the day of the unsolicited offer.

10. The exemption in paragraph 8 does not apply to a Promoter if the Promoter:

(a) relied on paragraph 8 in relation to an unsolicited offer of an interest in a greyhound scheme; and

(b) issued or sold an interest in the scheme to the unsolicited offeree without the offeree having initiated further discussions with the Promoter after the day of the unsolicited offer.

**Declaration—Advertising restrictions**

11. Part 7.9 of the Act applies in relation to a Promoter of a greyhound scheme as if section 1018A were modified or varied by inserting the following after subsection 1018A(6):

“(7) For the purposes of this section, section 1012C is taken to apply to a sale offer if it would apply but for an exemption under paragraph 1020F(1)(a).”.

**Exemption—Advertising restrictions**

12. A Promoter relying on paragraph 4 in relation to a greyhound scheme does not have to comply with section 1018A of the Act (as notionally modified by this instrument) in relation to a financial product that is an interest in the scheme.

*Where the exemption applies*

13. The exemption in paragraph 12 only applies in relation to an advertisement or a statement in relation to an interest in the scheme where:

(a) a disclosure statement is available in relation to the scheme; and

(b) the advertisement or statement identifies:

(i) if the interest is likely to be available by way of issue—the issuerof the interest; and

(ii) if the interest is likely to be made available in accordance with sale offers referred to in section 1018A of the Act (as notionally modified by this instrument)—the issuer of the interest and the seller of the interest; and

(c) the advertisement or statement indicates:

(i) that a disclosure statement is available in relation to the scheme and the way it can be obtained; and

(ii) that a person should consider the disclosure statement in deciding whether to participate in the scheme; and

(d) the Promoter has received written notice from the Controlling Body for the scheme that offers of interests in the scheme may be made and the Promoter has not received written notice from the body that such offers may no longer be made.

**Modification—Scheme registration**

14. Chapter 5C of the Act applies in relation to a person operating a managed investment scheme relating to a greyhound as if section 601ED were modified or varied by inserting the following after subsection 601ED(2):

“(2A) For the purposes of subsection (2), in determining whether the giving of a Product Disclosure Statement would have been required, ignore any exemption under paragraph 1020F(1)(a) in relation to an offer of interests in a scheme relating to a greyhound.”.

**Exclusion**

15. The exemptions in paragraphs 4, 8 and 12 do not apply to a Promoter in relation to a particular greyhound scheme or greyhound schemes generally if ASIC has notified the Promoter in writing to that effect and has not revoked that notice.

16. The exemption in paragraph 4 does not apply to a Manager in relation to a particular greyhound scheme or greyhound schemes generally if ASIC has notified the Manager in writing to that effect and has not revoked that notice.

**Interpretation**

17. In this instrument:

***Applied Rules*** in relation to a greyhound scheme means the requirements in the Schedule.

***Controlling Body*** means a body that has:

(a) published rules (***rules***) in relation to the regulation of greyhound schemes by the body; and

(b) entered into a memorandum of understanding with ASIC concerning the regulation of greyhound schemes, including in relation to the registration by the body of Promoters, Managers and greyhound schemes, review of disclosure statements, advertising in relation to greyhound schemes and monitoring of Promoters and Managers to ensure compliance with the rules; and

(c) been notified by ASIC in writing that it is a recognised Controlling Body for the purposes of this instrument and ASIC has not revoked that notification.

***disclosure statement*** in relation to a greyhound scheme means a statement relating to the scheme that contains information to assist persons in deciding whether to participate in the scheme, and which names or specifies (whether by ancestry or otherwise) the greyhound or greyhounds relevant to the scheme.

***financial statements*** in relation to greyhound scheme for a financial year means the profit and loss statements and the statement of assets and liabilities referred to in clause 3(c) of the Applied Rules.

***financial year*** in relation to a greyhound scheme means the year ending 31 December or such other day as specified in a scheme agreement approved by the Controlling Body for the scheme as the day on which the financial year ends.

***greyhound scheme*** means a managed investment scheme:

(a) in relation to which:

(i) the scheme is registered with a Controlling Body under its rules; or

(ii) both of the following are satisfied:

(A) the scheme is not, and has not been, registered with a Controlling Body;

(B) the Promoter of the scheme has notified a Controlling Body that it will apply to the Controlling Body for registration of the scheme under its rules; and

(b) that concerns the breeding or racing of greyhounds named or specified (whether by ancestry or otherwise) in a disclosure statement; and

(c) that is or is to be operated in accordance with a scheme agreement appointing a Manager.

***Manager*** in relation to a greyhound scheme means a natural person who:

(a) before the scheme is registered with a Controlling Body under its rules — is named as the manager of the scheme in the application for registration of the scheme with a Controlling Body; or

(b) is registered by a Controlling Body with the person’s consent as the manager of the scheme.

***offer*** includes an invitation to make an offer or an application.

***Promoter*** in relation to a greyhound schememeans a person who:

(a) is the promoter of the scheme; and

(b) is registered by a Controlling Body as the promoter of greyhound schemes.

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

***scheme agreement*** meansa document in relation to the operation of a greyhound scheme that is legally enforceable as between the Promoter, the Manager and members of the scheme.

Dated the 11th day of February 2015

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission

**Schedule**

**Applied Rules**

1. **Registration**

(a) The Manager must not permit a greyhound scheme to race a greyhound unless the scheme is registered with a Controlling Body under its rules.

(b) The Manager must ensure, where applicable, payment of each member’s share of prize money and bonuses won by a greyhound.

(c) The Manager must lodge with the Controlling Body at or before the time when the scheme is registered an agreement between the members of the scheme containing the following:

(i) the name and address and date of birth of each member and the percentage share of each member’s interest in each greyhound;

(ii) a statement setting out all financial arrangements agreed between the members and, in particular, the method of calculating and the timing of payment of any contributions due from members toward racing, training and other expenses;

(iii) provision for the appointment of a Manager in whom the possession of each greyhound is to be vested for the scheme;

(iv) a term imposing on the Manager an obligation to keep individual records of account for each greyhound.

Note: The records of account will assist a Manager to meet its obligations under subparagraph 6(e).

(d) The Manager must ensure that an application for renewal of registration of the scheme is made at least biennially.

2. **Manager**

(a) The Manager must keep possession of the greyhound.

(b) The Manager must:

(i) act honestly; and

(ii) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager’s position; and

(iii) act in the best interests of the members and, if there is a conflict between the members’ interests and the Manager’s own interests, give priority to the members’ interests; and

(iv) treat the members who hold interests of the same class equally and members who hold interests of different classes fairly; and

(v) carry out or comply with any other duty that is conferred on the Manager by the scheme agreement.

(c) The Manager must notify the Controlling Body in writing of any agreement to change the Manager within seven days of the agreement being entered into, or before the greyhound next racing, whichever is earlier.

Note: The new manager of the scheme will need to be registered with the Controlling Body in order to rely on the exemption in paragraph 4.

(d) The Manager must notify the Controlling Body in writing of any change in the composition or contact details of the members of the scheme within seven days of the change occurring, or before the greyhound next racing, whichever is earlier.

3. **Financial Management and Reporting**

(a) The Manager must open and maintain a separate trust account with an Australian ADI in respect of the scheme, which account must be used for the deposit and payment of all moneys relating to the operation of the scheme.

(b) The Manager must keep accounting records to explain the transactions and financial position of the scheme, such records to be kept in such a way as will enable a true and fair profit and loss statement and statement of assets and liabilities to be prepared in respect of the scheme from time to time when the Manager is required to do so.

(c) The Manager must, in respect of each financial year for the duration of the scheme, prepare a true and fair profit and loss statement and statement of assets and liabilities (together the ***financial statements***) and:

(i) lodge the financial statements with the Controlling Body within 90 days after the end of that financial year; and

(ii) give ASIC a copy of the scheme’s most recent financial statements within 14 days after receipt of a written request to do so by ASIC; and

(iii) by 31 March first following the end of the financial year, give to members such written information that the Manager, acting reasonably, believes an ordinary member needs in order to understand the member’s interest in the scheme.

4. **Promoters**

(a) If a Promoter has a place of business in a State or Territory where a Controlling Body is located, the Promoter must be registered with a Controlling Body located in a State or Territory where the Promoter is ordinarily resident or has a registered office or a place of business.

(b) If a member makes a written complaint to the Promoter in relation to the issue or sale of an interest in the scheme or the conduct of the scheme while it is under their management, the Promoter must fairly consider the complaint and must respond to the member within 7 days of receiving the complaint by:

(i) acknowledging the complaint; and

(ii) advising the member of the outcome of the Promoter’s consideration of the complaint; and

(iii) notifying the member that if they are not satisfied with the way in which the complaint is resolved, they have a right to appeal to the Controlling Body with whom the Promoter is registered or take any other action that the law permits.

(c) The Promoter must submit to any decision of the Controlling Body on an appeal referred to in clause 4(b)(iii).

(d) The Promoter must record each written complaint and its response.

(e) The Promoter must not represent or suggest that any approval or statement by a Controlling Body amounts to the Controlling Body endorsing the Promoter or the scheme.

(f) If the Promoter will not be the Manager of that scheme, the Promoter must clearly state in the disclosure statement that the Manager is required to manage the scheme in accordance with the terms of any agreement governing the scheme approved by the Controlling Body and any rules, regulations or guidelines made by the Controlling Body in respect of such Manager or management.

(g) Within 7 days of receiving a member’s money for the issue or sale of an interest in the scheme, the Promoter must issue the member with a receipt and a certificate confirming the member’s membership in the scheme and the nature of that membership.

(h) Within 45 days of the scheme being fully subscribed***,*** the Promoter must apply to have the scheme registered with the Controlling Body under its rules.

(i) Before registration of the scheme with the Controlling Body, the Promoter must ensure that the members have unencumbered title to the whole of each of the scheme’s greyhounds.

(j) For so long as the scheme is promoted by the Promoter, the Promoter must ensure that the scheme is operated honestly, efficiently and fairly.