

ASIC CLASS ORDER [CO 05/0874]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Subsection 601QA(1)(a) — Variations

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Class Order [CO 05/0874] under paragraph 601QA(1)(a) of the *Corporations Act 2001* (the *Act*).

1. Background

Under subsection 601FC(4) a responsible entity of a registered managed investment scheme may only invest scheme property, or keep scheme property invested, in another managed investment scheme if that other scheme is registered under Chapter 5C of the Act. Class Order [CO 98/55] exempts responsible entities of registered managed investment schemes from subsection 601FC(4) of the Act in a number of specified circumstances.

2. Class Order [CO 05/0874] *Investments in unregistered schemes - amendment*

Class Order [CO 05/0874] effects only one amendment to [CO 98/55], which is to extend indefinitely the relief set out in paragraph 2, which was previously due to expire on 30 September 2005. The effect of that relief, which is now unlimited in duration, is to allow responsible entities of registered managed investment schemes to invest scheme assets in unregistered managed investment schemes the underlying assets of which consist solely or substantially of a pool or collection of debts, or other financial obligations, of a similar nature. Such assets are commonly referred to as asset-backed securities. In order to rely on the relief, the responsible entity must be satisfied that it:

- (a) is entitled to have the investment (less any fees) repaid on or by a date (the "final maturity date") that is determined on or before the issue of the interest;
- (b) is entitled to distribution of income at a rate that is:
 - (i) determined on or before the issue of the interest; or
 - (ii) calculated in accordance with a method that is determined on or before the issue of the interest;
- (c) is not entitled under the unregistered scheme to any other income from the investment; and
- (d) is satisfied on reasonable grounds, when the investment is made that:

- (i) the investment (less any fees) will be repaid on or by the final maturity date; and
- (ii) all income from the investment will be paid when it is due, having regard to all the circumstances including any relevant credit rating issued by a ratings agency.

3. **Consultation**

Consultation was not required as the class order is minor or machinery in nature. However, ASIC conducted targeted consultation by writing to the two relevant industry associations seeking views on whether there was a continued need for the relief in light of legislative changes since the relief was first made available, and whether it was appropriate for ASIC to continue the relief without a sunset clause.

ASIC received responses from both industry associations. They both expressed the view that the relief should be continued. Class Order [CO 05/0874] takes those views into account.