

**Australian Securities and Investments Commission  
Corporations Act 2001 – Paragraph 601QA(1)(a)  
Revocation and Exemption**

Under paragraph 601QA(1)(a) of the *Corporations Act 2001* (the "Act") the Australian Securities and Investments Commission ("ASIC") hereby revokes ASIC Class Order [02/214] with effect from 11 March 2004.

And under paragraph 601QA(1)(a) of the Act ASIC hereby exempts each person referred to in Schedule A from paragraph 601FC(1)(d) of the Act to the extent that it requires them to treat the members who hold interests of the same class equally, in the cases referred to in Schedule B, on the conditions set out in Schedule C and for so long as they are met.

**Schedule A**

The responsible entity of a registered scheme (the "responsible entity").

**Schedule B**

1. The charging, rebating or waiving of fees including entry, exit and periodic fees ("management fees") by the responsible entity to members on a basis that differs from that applying to other members who hold interests of the same class and that is based on at least one of the following:
  - (a) the total value of, or the number of, interests held by the member or by the member and one or more associated parties in one or more of:
    - (i) the scheme;
    - (ii) all or any other specified managed investment schemes operated by the responsible entity or a related body corporate of the responsible entity;
    - (iii) all or any specified financial products issued by the responsible entity or a related body corporate of the responsible entity; or
  - (b) the total period of time during which the member or the member and one or more associated parties has held interests in one or more of:
    - (i) the scheme;
    - (ii) all or any other specified managed investment schemes operated by the responsible entity or a related body corporate of the responsible entity;
    - (iii) all or any specified financial products issued by the responsible entity or a related body corporate of the responsible entity; or

- (c) the member carrying out transactions or receiving services (including the receipt of documents required by or under the Act) in relation to the scheme by electronic means, where the responsible entity reasonably believes that the member will have reasonable access to those electronic means of transacting or receiving services; or
  - (d) the member being an employee of the responsible entity or a related body corporate of the responsible entity ("employee member") in circumstances where the number of votes that may be cast on a resolution of the scheme's members by employee members is no more than 5% of all votes of members; or
  - (e) the member having acquired their interests under a switching facility that involved the member first withdrawing from another managed investment scheme operated by the responsible entity; or
  - (f) savings to the scheme resulting, or reasonably expected by the responsible entity to result, from the lower cost of servicing a member of the scheme because of particular characteristics of that member or of their investment, where the amount of the benefit by way of lower management fees charged to that member, or the rebate or waiver of management fees provided to that member is no greater than a reasonable estimate of the amount of the saving or expected saving.
2. The charging, rebating or waiving of management fees by the responsible entity to a member who acquired their interests in the scheme in response to an offer:
- (a) made to a person ("sophisticated or professional investor") where the offer does not require disclosure to investors under Part 6D.2 of the Act because it is covered by subsections 708(8) or 708(11); or
  - (b) that does not require the giving of a Product Disclosure Statement because it is made to a wholesale client,

on a basis that differs from that applying to other members who hold interests of the same class and that is based on individual negotiation between the responsible entity and that member.

### **Schedule C**

1. The responsible entity must ensure that:
- (a) where a differential fee arrangement of a kind referred to in paragraph 1 of Schedule B is in place or is to be offered, a statement of the basis upon which the differential fee will be calculated and which specifies the fees members will have to bear; and
  - (b) where a differential fee arrangement of a kind referred to in paragraph 2 of Schedule B is in place or is to be offered to certain sophisticated or professional investors or wholesale clients, a statement of that fact,

is or has been disclosed in a clear, concise and effective manner:

- (c) to existing members of the scheme by no later than the date of the first communication by the responsible entity to all members after the date when the differential fee arrangement is first offered; and
  - (d) in any disclosure document or Product Disclosure Statement required by the Act in relation to the scheme.
2. The responsible entity must ensure that the differential fee arrangements referred to in Schedule B do not adversely affect the fees paid or to be paid by any member of the scheme who is not entitled to the benefit of those fee arrangements.
  3. The responsible entity must ensure that where a differential fee arrangement of a kind referred to in paragraph 1 of Schedule B is in place or is to be offered, that arrangement is applied without discrimination to all members who satisfy the criteria necessary to receive the benefit of the arrangement.

### **Interpretation**

For the purposes of this instrument:

1. "associated party" of a member means:
  - (a) a spouse, parent, child, brother or sister of the member; or
  - (b) an entity controlled by the member or by a person described in paragraph (a);  
and
2. "wholesale client" has the meaning given to that term by section 761G of the Act.

Dated this 27th day of March 2003

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