

ASIC INSTRUMENT [06/0347]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Paragraphs 601QA(1)(a), 741(1)(a) and 911A(2)(l) – Order

The following paragraphs of the *Corporations Act 2001* (the “Act”) provides that the Australian Securities and Investments Commission (“ASIC”) may exempt a person from a provision or requirement of the Act:

- paragraph 601QA(1)(a) provides that ASIC may exempt a person from a provision of Chapter 5C of the Act;
- paragraph 741(1)(a) provides that ASIC may exempt a person from a provision of Chapter 6D of the Act; and
- paragraph 911A(2)(l) provides that ASIC may exempt a person from the requirement to hold an Australian financial services licence (*AFSL*).

1. Background

The Cruising Club (Australasia) Pty Limited ACN 084 335 222 (“Cruising Club”) proposes to engage in the activity of promoting and managing fractional boat owning syndicates.

The purpose of syndication is to allow persons to occupy a boat for personal and recreational purposes for certain periods of time. The Cruising Club will promote the concept of syndication to a prospective Developer. The Developer will provide funding to purchase the boat or supply the boat. The boat will be acquired by a Boat Owing Company. The Developer will register the Boat Owing Company. All of the issued share capital of the Boat Owing Company will be initially issued to the Developer in consideration for providing the funding for the boat or supplying the boat. The shares will be offered for sale to persons who wish to participate in the syndicate. Persons who wish to participate in the syndicate will enter into an agreement which confers rights and entitlements on the holder of the shares to occupy the nominated boat for certain periods of time. The number of members per syndicate will not exceed 16 persons.

ASIC was of the view that:

- (a) the proposed syndicate arrangement is a “time-sharing scheme” and therefore a “managed investment scheme” within the Act;

- (b) each syndicate is required to be registered under Chapter 5C of the Act;
- (c) the prospectus provisions in Chapter 6D of the Act and the Product Disclosure Statement (PDS) provisions in Part 7.9 of the Act are likely to be triggered in relation to offers of time-sharing rights; and
- (d) the Cruising Club will be carrying on a financial services business and therefore required to hold an AFSL.

The Cruising Club made an application to ASIC seeking licensing, scheme registration and disclosure relief in relation to its proposed activities.

2. Purpose of the instrument

Having regard to ASIC Policy Statement 160: *Time-Sharing Schemes*, ASIC agreed to grant conditional relief with respect to licensing, scheme registration and disclosure relief with respect to the prospectus provisions. ASIC refused relief with respect to the PDS provisions, and also refused hawking relief. This instrument gives effect to this decision.

ASIC considered that the proposed activities are on the periphery of financial services regulation and that syndicate members who acquire time-sharing rights are not acquiring a financial product for the purposes of financial investment. The syndicate is intended to and will produce recreational benefits to syndicate members. Disclosure, and in particular PDS disclosure with prominent warnings, was considered sufficient to provide a basic consumer protection mechanism without imposing disproportionately burdensome additional regulation in the form of scheme registration and licensing.

3. The instrument

The instrument grants relief with respect to licensing, scheme registration and prospectus disclosure, subject to the following conditions:

- (a) the Cruising Club must join an approved external dispute resolution scheme; and
- (b) the PDS must prominently disclose the following, among other things:
 - (i) an interest in the syndicate is not an investment product, and syndicate members should not join the syndicate with a view to profit;
 - (ii) persons who subscribe for syndicate interests have cooling-off rights; and
 - (iii) the syndicate is not a registered managed investment scheme and the promoters of the syndicate do not hold an AFSL.

The prominent warnings and cooling-off rights are intended to address regulatory concerns relating to the promotion of time-sharing schemes.

ASIC has taken the conservative view that the instrument is a legislative instrument under the *Legislative Instruments Act 2003* because the instrument is expressed to apply to the Cruising Club, Boat Owning Company, Developer and to persons to whom the Cruising Club grants franchisee rights.

4. Consultation

ASIC did not engage in consultation with external parties (except for the Cruising Club) because the instrument is in substance an individual instrument of relief.