

ASIC CLASS ORDER 07/90

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001- Paragraphs 601QA(1)(a), 911A(2)(l) and 1020F(1)(a) -
variation

Paragraph 601QA(1)(a) of the *Corporations Act 2001* (the Act) provides that the Australian Securities and Investments Commission (ASIC) may exempt a person from a provision of Chapter 5C of the Act.

Paragraph 911A(2)(l) of the Act provides that a person is exempt from the requirement to hold an Australian financial services licence for a financial service if the provision of the service is covered by an exemption covered by an exemption specified by ASIC in writing and published in the *Gazette*.

Paragraph 1020F(1)(a) of the Act provides that ASIC may exempt a person or class of persons from all or specified provisions in Part 7.9 of the Act.

1. Background

A rental pool involves the pooling of members unused time-sharing entitlements for the purpose of renting those entitlements to other persons. The proceeds of the rental pool (after related expenses are deducted) are then distributed among members of the rental pool. A rental pool allows members to receive income if they do not choose to use their allocated time during any particular year.

Section 601ED of the Act provides that a managed investment scheme must be registered under section 601EB if:

- (a) it has more than 20 members;
- (b) it was promoted by a person, or an associate of a person who was, when the scheme was promoted, in the business of promoting managed investment schemes; or
- (c) ASIC determines that a number of managed investment schemes are closely related and that each of them has to be registered at any time when the total number of members of all of the schemes exceeds 20.

Division 3 of Part 7.9 imposes various disclosure obligations on the issuer of a financial product, including to provide ongoing disclosure.

ASIC Class Order 02/237 Time-sharing schemes – operation of rental pool (CO 02/237) grants conditional relief from the requirements to:

- (a) register the rental pool as a managed investment scheme under section 601ED of the Act;

- (b) obtain an Australian financial services licence for persons (other than the operator of the rental pool) that provide financial services for the interests in the rental pool; and
- (c) comply with the additional disclosure requirements in Division 3 of Part 7.9 of the Act (except section 1017D of the Act).

[CO 02/237] also revokes earlier relief granted by ASIC for the operation of rental pools in ASIC Class Order 01/179 Time-sharing schemes – operation of rental pool.

ASIC has granted relief in [CO 02/237] for:

- (a) a rental pool that forms part of a new time-sharing scheme; and
- (b) a rental pool formed after interests in a time-sharing scheme have been issued.

ASIC has granted this relief because the rental pool is generally an incidental part of the business associated with the time-sharing scheme.

ASIC has imposed conditions on the relief that will:

- (a) help consumers make an informed decision about the costs associated with the rental pool;
- (b) help members understand their investment in the rental pool; and
- (c) protect members from loss or misappropriation of the proceeds of the rental pool.

2. The Class Order

ASIC Class Order 07/90 (CO 07/90) effects amendments to [CO 02/237] that are intended to replace outdated references to the disclosure regime in Chapter 6D of the Act and the transitional disclosure regime in Part 10.2 of the Act, which no longer apply to time-sharing interests, and replace them with references to the disclosure regime in Part 7.9 of the Act, which now applies to time-sharing interests following recent legislative changes.

3. Consultation

ASIC did not consult on the amendments to [CO 02/237] in [CO 07/90], as they are only minor or machinery in nature.