

**ASIC CLASS ORDER [CO 10/0830]
EXPLANATORY STATEMENT**

Prepared by the Australian Securities and Investments Commission
Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes [CO 10/0830] under paragraphs 601QA(1)(b), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001* (the *Act*).

Paragraph 601QA(1)(b) of the *Corporations Act 2001* (the *Act*) provides that the Australian Securities and Investments Commission may declare that Ch 5C of the *Act* apply to a person as if the provisions were omitted, modified or varied in a certain way.

Paragraph 926A(2)(a) of the *Act* provides that ASIC may exempt a person from a provision of Pt 7.6 of the *Act* (other than Divs 4 and 8).

Paragraph 992B(1)(a) of the *Act* provides that ASIC may exempt a person from a provision of Pt 7.8 of the *Act*.

Paragraph 1020F(1)(a) of the *Act* provides that ASIC may exempt a person from a provision of Pt 7.9 of the *Act*.

Background

On 20 October 2009, the Full Federal Court held in *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147 that a funded representative action and solicitors' retainers for two representative proceedings against Brookfield Multiplex Ltd in the Federal Court were a managed investment scheme that should have been registered for the purposes of the *Act*.

On 4 May 2010, the Government announced that it would make regulations exempting representative proceedings and proof of debt arrangements from:

- (a) the definition of managed investment scheme in s9 of the *Act*; and
- (b) Pts 7.6, 7.7, 7.8 and 7.9 of the *Act* as long as there are appropriate arrangements in place to manage conflicts of interest.

ASIC executed [CO 10/333] on 5 May 2010. [CO 10/333]:

1. provides for Ch 5C to apply as if the definition of a managed investment scheme in s9 of the *Act* were varied to exclude funded representative proceedings and funded proof of debt arrangements.
2. exempts funders, lawyers and their representatives and other persons from the requirements to hold an AFSL or act as an authorised representative of a licensee to provide financial services associated with funded representative proceedings and funded proof of debt arrangements.
3. exempts from the requirement comply with the disclosure provisions in Pt 7.9 of the *Act* in relation to interests in funded representative proceedings and funded proof of debt arrangements.

The relief in [CO 10/333] had effect until 30 September 2010.

Purpose of [CO 10/0830]

[CO 10/0830] will enable the temporary operation of funded representative proceedings and funded proof of debt arrangements without compliance with the requirements of the Act until 1 March 2011. This is to allow additional time for the incoming Government to make a decision about how it wishes to proceed; and for that decision to be implemented.

Operation of [CO 10/0830]

[CO 10/0830] varies [CO 10/333] by replacing 30 September 2010 in paragraph 10 with 1 March 2011.

Consultation

ASIC did not undertake consultation with respect to [CO 10/0830] as it is of a minor and machinery nature, and was required as a matter of urgency to address the operation of the relevant schemes after the expiration of [CO 10/333].