

**Australian Securities and Investments Commission  
Corporations Act 2001 — Subsection 601QA(1) — Exemption**

**Enabling legislation**

1. The Australian Securities and Investments Commission makes this instrument under subsection 601QA(1) of the *Corporations Act 2001* (the *Act*).

**Title**

2. This instrument is ASIC Class Order [CO 13/656].

**Commencement**

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

**Exemption — Equality of treatment**

4. A responsible entity of a registered scheme does not have to comply with paragraph 601FC(1)(d) of the Act to the extent that it would prevent the responsible entity from doing any or all of the following:
  - (a) making an offer of interests to a member (a *non-resident*) with a registered address outside Australia and New Zealand if the responsible entity:
    - (i) where the scheme is included in the official list of the financial market operated by ASX Limited and the offer is one to which Rule 7.7 (Issues to Australian and New Zealand holders and overseas holders) of the listing rules of ASX Limited as at 1 June 2013 applies—complies with the requirements of that rule that are applicable to the relevant offer and issue of interests; or
    - (ii) where the scheme is not included in the official list of the financial market operated by ASX Limited and the offer is renounceable—appoints a nominee to sell the rights to acquire the interests that are not offered to the non-residents and distribute to each non-resident their proportion of the proceeds of sale net of expenses; or
    - (iii) in any other case—determines that it would be unreasonable to make the offer to the non-resident having regard to each of the following:
      - (A) the number of members in the place (the *relevant place*) where the registered address of the non-resident is situated;
      - (B) the number and the value of the interests that may be issued to non residents in the relevant place;

- (C) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place;
- (b) offering interests to some members (the *priority offerees*) who would be acquiring as wholesale clients at an earlier time than other members where:
  - (i) the terms of the offer require the priority offerees to notify the responsible entity of their acceptance of the offer by a date that occurs before another date by which other members are to notify their acceptance; and
  - (ii) under the terms of the offers interests will not be issued to the priority offerees before the earliest date on which interests may be issued to the other members of the scheme; and
  - (iii) interests are only issued to the priority offerees in accordance with the terms of the offers required by paragraphs (i) and (ii);
- (c) dealing with complaints made by members who acquire an interest as wholesale clients differently from complaints by other members;
- (d) offering and issuing interests in accordance with ASIC Class Order [CO 09/425].

**Exemption — Acquiring interests on forfeiture**

- 5. A responsible entity of a registered scheme does not have to comply with paragraph 601FG(1)(a) of the Act to the extent that it would prevent the responsible entity from acquiring interests on trust for the members of the scheme on forfeiture of the interests where the constitution requires that any sale of the interests be in accordance with the requirements in subsection 601GAD(9) of the Act as notionally in force because of ASIC Class Order [CO 13/655].

**Interpretation**

- 6. In this instrument:
  - offer* includes, in relation to an issue of interests, inviting an application for the issue of interests.
  - wholesale client* has the meaning given by section 761G of the Act.

Dated this 5<sup>th</sup> day of June 2013

Signed by Stephen Yen PSM  
as a delegate of the Australian Securities and Investments Commission