

**Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 601QA(1) and 1020F(1) — Declaration**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 601QA(1) and 1020F(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 13/657].

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/>.

Declaration — Discretions affecting the amount of consideration to acquire interests and payments for withdrawal

4. Chapter 5C of the Act applies to a responsible entity as if provisions of that Chapter were modified or varied as follows:
 - (a) After subsection 601FC(1) insert:

“Exercise of discretion on issue or withdrawal

 - (1A) The responsible entity must ensure that the manner in which a discretion affecting determination of the amount of consideration to acquire interests or the terms of any payment or removal of liability arising from withdrawal from the scheme is exercised is as far as practicable:
 - (a) if the discretion relates to working out the value of scheme property—consistently with ordinary commercial practice for valuing property of the relevant kind; and
 - (b) if the discretion relates to working out the market price of interests in the scheme which are quoted on a financial market—consistently with ordinary commercial practice for working out the market price of interests of the same kind in relation to an issue of the interests; and
 - (c) in either case, consistently with producing a value or price that is reasonably current at the time of the issue or withdrawal.

Documentation of exercise of discretion

- (1B) The responsible entity must prepare one or more documents when discretion is exercised that affects the amount of the consideration to acquire interests or the terms of any payment or removal of liability

arising from withdrawal from the scheme that:

- (a) set out:
 - (i) a description of the formula or method that the responsible entity is to apply including each discretion relevant to the formula or method or any adjustment to the amount determined and when it may be exercised; and
 - (ii) what policy (the *documented policy*) (if any) the responsible entity has set dealing with how each discretion is to be exercised and the date on which the policy was set; and
 - (iii) what records the responsible entity will keep about the exercise of each discretion; and
- (b) if the discretion is to be exercised by a person engaged by the responsible entity—state that the discretion will be so exercised and identify the person or if the person is a natural person the office or position that would be held by the person from time to time; and
- (c) in relation to each discretion for which a documented policy has been set—explain why it is reasonable to exercise the discretion in accordance with the policy; and
- (d) without limiting paragraph (c), if the exercise of the discretion in accordance with the documented policy would not be consistent with scheme property being valued, or the market price of interests being worked out, in accordance with ordinary commercial practice or the valuation being reasonably current—explain why it is impracticable to do so.

Note: The responsible entity may appoint an agent or otherwise engage a person to do anything it is authorised to do in relation to a scheme: see subsection 601FB(2).

(1C) The responsible entity must when discretion is exercised that affects the amount of the consideration to acquire interests or the terms of any payment or removal of liability arising from withdrawal from the scheme:

- (a) in relation to which there is no documented policy that is current at the time of exercise; or
- (b) in a way that involves a departure from the documented policy relating to the discretion that is current at the time of exercise,

prepare a document which sets out all of the following:

- (c) the date on which the discretion is exercised;
- (d) who is making the decision;
- (e) how the discretion is exercised;
- (f) an explanation why it was reasonable to exercise the discretion the way it was exercised;
- (g) without limiting paragraph (f), if the discretion is not exercised in a way which is consistent with scheme property

being valued, or the market price of interests being worked out, in accordance with ordinary commercial practice or the valuation being reasonably current (see subsection (1A))—an explanation why it is impracticable to do so.

- (1D) The responsible entity must ensure that the records which it keeps under section 988A are kept in such a way as will enable:
- (a) any documented policy that was applied in the exercise of the discretion under subsection (1B); and
 - (b) any document relating to the exercise of a discretion of the kind covered by subsection (1C),
- that relates to an issue or withdrawal of an interest to be identified.

Access to and retention of documents

- (1E) The responsible entity must:
- (a) retain the documents covered by subsections (1B) and (1C) for 7 years after they cease to be current; and
 - (b) inform all members that they may obtain copies of the documents referred to in paragraph (a) from the responsible entity at no charge; and
 - (c) give a copy of the documents referred to in paragraph (a) to the following persons on request at no charge:
 - (i) a member of the scheme;
 - (ii) a person who has been or should have been given, or who has obtained, the Product Disclosure Statement for an interest in the scheme.”.

Declaration — Disclosure of information about discretions

5. Part 7.9 of the Act applies in relation to a responsible entity as if Part 7.9 of the Act were modified or varied by inserting after section 1013DA:

“1013DAA Responsible entity discretions about issue and withdrawal

If a Product Disclosure Statement relates to a managed investment product and the responsible entity of the registered scheme to which the product relates is required to prepare documents under subsections 601FC(1B) or (1C) as in force because of ASIC Class Order [CO 13/657]—the Product Disclosure Statement must include statements to the effect that copies of documents relating to discretions about pricing of interests are available from the responsible entity at no charge.”

Transitional

6. Paragraph 4 and 5 only applies to a responsible entity in relation to a managed investment scheme:
- (a) if it became a registered scheme after 30 September 2013; or

- (b) in relation to which the responsible entity has at any time published on its website a notice that it will rely on ASIC Class Order [CO 13/655].

Note: A notice under subparagraph 6(b) cannot be revoked.

Dated this 5th day of June 2013

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