

Australian Securities and Investments Commission
Corporations Act 2001—Paragraph 926A(2)(c)—Declaration and Revocation

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 926A(2)(c) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 13/760].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 1 July 2013.

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*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Part 7.6 (other than Divisions 4 and 8) of the Act applies in relation to financial services licensees as if that Part were modified or varied by, after subsection 912A, inserting:

“Section 912AA Adequate financial resources for responsible entities and IDPS operators

- (1) This section applies to a financial services licensee that:
 - (a) holds an Australian financial services licence that authorises it to operate:
 - (i) a registered scheme as a responsible entity; or
 - (ii) an IDPS; and
 - (b) is not:

- (i) a body regulated by APRA that is not required to comply with paragraph 912A(1)(d); or
 - (ii) a market participant; or
 - (iii) a clearing participant.
- (2) A financial services licensee covered by subsection (1) that complies with this section is taken to comply with conditions (if any) of its licence that relate to:
- (a) a cash needs requirement; and
 - (b) net tangible assets that apply because it is a responsible entity or is authorised to operate an IDPS; and
 - (c) the obligation to lodge an opinion by a registered company auditor on the financial requirements for licensees that are authorised to operate a registered scheme as a responsible entity or an IDPS to the extent the opinion is for a part of a financial year or other period during which the licensee was covered by subsection (1).

Note: The conditions on the licence may include other requirements in relation to having available adequate financial resources for the purposes of paragraph 912A(1)(d).

Cash needs requirement

- (3) The licensee must:
- (a) prepare a projection of the licensee's cash flows over at least the next 12 months based on the licensee's reasonable estimate of what is likely to happen over this period; and
 - (b) have the projection approved at least quarterly by the licensee's directors as satisfying the requirements of paragraph (a); and
 - (c) document the calculations and assumptions used in preparing the projection, and describe in writing why the assumptions are appropriate; and
 - (d) update the projection of the licensee's cash flows if:
 - (i) the projection ceases to cover at least the next 12 months; or
 - (ii) there is reason to suspect that an updated projection would differ materially from the current projection or show that the licensee was not meeting the requirements in subparagraphs (i) and (ii) of paragraph (e); and

- (e) document whether, based on the projection of the licensee's cash flows, the licensee:
 - (i) will have access when needed to enough financial resources to meet its liabilities over the projected term of at least the next 12 months; and
 - (ii) will hold at all times during the period to which the projection relates in cash or cash equivalents, an amount equal to or greater than the current amount the licensee is required to hold in cash or cash equivalents under subsection (8).

Net tangible assets

- (4) The licensee must hold at all times NTA of:
 - (a) if subsection (5) applies—at least the greatest of:
 - (i) \$150,000; or
 - (ii) an amount of up to \$5 million, being 0.5% of the average value of scheme and IDPS property of registered schemes and IDPSs operated by the licensee; or
 - (iii) 10% of average RE and IDPS revenue of the licensee;
 - (b) otherwise—at least the greater of:
 - (i) \$10 million; or
 - (ii) 10% of average RE and IDPS revenue of the licensee.
- (5) This subsection applies if at least one of the following is satisfied in relation to each registered scheme (if any) operated by the licensee as responsible entity and each IDPS (if any) operated by the licensee:
 - (a) in the case of:
 - (i) a registered scheme, all the scheme property and other assets of the scheme not held by members; and
 - (ii) an IDPS, all IDPS property for which the licensee is responsible to clients of the IDPS for holding;

are held by:

- (iii) a custodian appointed by the licensee that:
 - (A) if the custodian is a financial services licensee that is authorised to provide a custodial or depository service—the licensee reasonably believes is not an incidental provider and complies with the requirements of section 912AC; and

Note: Section 912AC was notionally inserted by ASIC Class Order [CO 13/761].

- (B) otherwise—satisfies the requirements of subsection (7); or
- (iv) a sub-custodian appointed by such a custodian; or
- (v) until 1 July 2014, a custodian (or a sub-custodian appointed by such a custodian) who:

- (A) immediately before the commencement of this section:
 - (I) held an Australian financial services licence authorising the custodian to provide a custodial or depository service; or
 - (II) held scheme property or other assets of a registered scheme as a custodian; and

- (B) holds \$5 million NTA; or

- (vi) an eligible custodian; or
- (b) in the case of a registered scheme, all the scheme property and other assets of the scheme not held by members are Tier \$500,000 class assets held by:
 - (i) the licensee; or
 - (ii) a custodian appointed by the licensee; or
 - (iii) a sub-custodian appointed by the custodian;

provided that:

- (iv) where the person holding the scheme property or other assets is the licensee—the licensee holds at least \$500,000 NTA; or

- (v) where the person holding the scheme property or other assets is a custodian or sub-custodian—the custodian:
 - (A) holds at least \$500,000 NTA; or
 - (B) is an eligible custodian; or
- (c) in the case of:
 - (i) a registered scheme, the only scheme property and other assets of the scheme not held by members; and
 - (ii) an IDPS, the only IDPS property for which the licensee is responsible to clients of the IDPS for holding;

that are not held in accordance with paragraph (a) or (b) are special custody assets, each of which is held by:

 - (iii) the licensee; or
 - (iv) an eligible custodian; or
 - (v) a custodian that holds at least the NTA that the licensee would be required to hold under paragraph (4)(a) or a sub-custodian appointed by such a custodian; or
 - (vi) a custodian or a sub-custodian appointed by the custodian if the only assets held for the scheme or IDPS are those mentioned in:
 - (A) paragraphs (a), (c) or (g) of the definition of *special custody assets* in subsection (11); or
 - (B) paragraph (d) of the definition of *special custody assets* where the audited trust account is a regulated trust account.
- (6) If the licensee:
 - (a) has obtained a written assurance within the preceding 13 months from a custodian that holds an Australian financial services licence authorising it to provide a custodial or depository service that, at the time the assurance is given, the custodian complies with the requirements of section 912AC and is not an incidental provider; and
 - (b) has no reason to suspect that the custodian does not currently comply with those requirements or is an incidental provider;

the licensee is taken to have the reasonable belief referred to in subsection (5)(a)(iii) in relation to the custodian.

- (7) A custodian satisfies the requirements of this subsection at a time (*relevant time*) if the licensee:
- (a) has obtained a written assurance from the custodian within the preceding 13 months that, at the time the assurance is given, the custodian complies with the following requirements as if the custodian were a financial services licensee that was authorised to provide a custodial or depository service and was not an incidental provider:
 - (i) the requirements of subsections 912AC(3), (4) and (7) and paragraph 912AC(8)(a); and
 - (ii) if the custodian would be required to lodge a report with ASIC under subsection 912D(1B) relating to a breach of subsections 912AC(3), (4) or (7), it must immediately notify the licensee; and
 - (b) has no reason to suspect that the custodian does not currently comply with those requirements; and
 - (c) has obtained a copy of a report from a registered company auditor in respect of a period of at least 12 months ending no more than 16 months before the relevant time, that states that:
 - (i) in the auditor's opinion, the custodian complied with the requirements referred to in subparagraphs 912AC(10)(a)(i) to (iii); and
 - (ii) following an examination of the calculations, assumptions, description, projections and document referred to in paragraph 912AC(10)(b) and prepared by the custodian for the purposes of complying with the requirements of subsection 912AC(3) as if it were a licensee authorised to provide custodial or depository services and was not an incidental provider, the auditor has no reason to believe the matters referred to in subparagraphs 912AC(10)(b)(i) to (v) apply in relation to the custodian;

other than to the extent that the requirements or matters deal with conditions of an Australian financial services licence that are not requirements under subsections 912AC(3), (4) or (7) or paragraph 912AC(8)(a), as if the custodian were a licensee authorised to provide custodial or depository services and was not an incidental provider.

- (8) The licensee must hold at all times:

- (a) in cash or cash equivalents in an amount that is at least the greater of:
 - (i) \$150,000; or
 - (ii) 50% of the amount of NTA that it is required to hold under paragraph (4); and
- (b) liquid assets in an amount that is at least 100% of the required NTA.

Money that is in an account held by the licensee for the purposes of section 981B cannot be counted towards either requirement. Other cash or cash equivalents that are also liquid assets can be counted for both paragraph (a) and (b).

Audit opinion on financial requirements

- (9) The licensee must lodge with ASIC a report (the ***audit opinion***) by a registered company auditor addressed to the licensee and ASIC for each financial year of the licensee and any other period that ASIC directs in writing that states whether, during any part of the period for which the licensee was covered by subsection (1):
 - (a) in the auditor's opinion, the licensee:
 - (i) complied with paragraph (3)(b) and subsections (4) and (8) and other financial requirements in conditions on its licence; and
 - (ii) had at all times a projection that purports to, and appears on its face to, comply with paragraph (3)(a); and
 - (iii) correctly calculated the projection in paragraph (3)(a) on the basis of the assumptions the licensee used for the projection; and
 - (b) following an examination of the calculations, assumptions and description prepared under paragraph (3)(c) and relied on by the licensee in complying with paragraph (3)(a), the projections prepared under paragraph (3)(a) and the document prepared under paragraph (3)(e), the auditor has no reason to believe that:
 - (i) the licensee did not have adequate systems for managing the risk of having insufficient financial resources to comply with subsections (4) and (8) and other financial requirements in conditions on its licence; or

Note: Paragraph 912A(1)(h) requires a licensee (other than a body regulated by APRA) to have adequate risk management systems.

- (ii) the licensee failed to comply with paragraph (3)(c); or
 - (iii) the licensee will not have access when needed to enough financial resources to meet its liabilities over the projected term of at least the next 12 months; or
 - (iv) the licensee will not hold at all times during the period to which the projection relates in cash or cash equivalents, an amount equal to or greater than the current amount the licensee is required to hold in cash or cash equivalents under subsection (8); or
 - (v) the assumptions the licensee adopted for its projection in paragraph 3(a) were unreasonable.
- (10) The audit opinion must be lodged:
- (a) for each financial year of the licensee—with the balance sheet that the licensee is required to lodge under section 989B; and
 - (b) for any period of time that ASIC directs—by no later than the date ASIC directs in writing the audit opinion to be lodged.

(11) In this section:

adequately secured means, in relation to a financial services licensee:

- (a) secured by an enforceable security interest over a financial product (other than a financial product issued by the licensee or its associates) if:
 - (i) the financial product is:
 - (A) regularly traded on:
 - (I) a financial market (as defined in subsection 767A(1) and disregarding subsection 767A(2)) operated by a market licensee or a financial services licensee other than the licensee or its associates that, in the reasonable opinion of the licensee, produces sufficiently reliable prices to assess the value of the security provided by the security interest; or
 - (II) an approved foreign market; or
 - (B) an interest in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity of the

scheme and the licensee believes on reasonable grounds that withdrawal may be effected within 5 business days; and

- (ii) the market value of the financial product is:
 - (A) if the financial product is a debt instrument—at least 109% of the amount owing; or
 - (B) otherwise—at least 120% of the amount owing; or
- (b) secured by a registered first mortgage over real estate that has a fair market valuation of at least 120% of the amount owing; or
- (c) owing from an eligible provider; or
- (d) secured by an enforceable security interest over amounts owing to another financial services licensee which themselves are adequately secured.

adjusted assets means, in relation to a financial services licensee, the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

- (a) minus the value of excluded assets that would be included in the calculation; and
- (b) minus the value of any receivable that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and
- (c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and
- (d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and
- (e) plus the amount of any eligible undertaking that is not an asset.

adjusted liabilities means, in relation to a financial services licensee, the amount of total liabilities as they would appear on a balance sheet at the time

of calculation made up for lodgement as part of a financial report under Chapter 2M if the licensee were a reporting entity:

- (a) minus the amount of any liability under any subordinated debt approved by ASIC in writing; and
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets; and
- (c) minus the amount of any liability under a credit facility that is made without recourse to the licensee; and
- (d) plus the value of any assets that are encumbered (other than assets that are encumbered merely to support a guarantee provided by the licensee) as a security against another person's liability where the licensee is not otherwise liable, but only up to the lower of:
 - (i) the amount of that other person's liability; or
 - (ii) the value of the assets encumbered; and
- (e) plus the maximum potential liability of any guarantee provided by the licensee other than:
 - (i) a guarantee limited to an amount recoverable out of any scheme property (and in the case of a scheme which is not registered, out of any contributions, money, property or income that would be scheme property if the scheme were registered) of a managed investment scheme operated by the licensee; or
 - (ii) a guarantee of the obligations of another member of a stapled group, except where the licensee is the responsible entity of a registered scheme that is not part of the stapled group.

amount of an eligible undertaking means the amount that remains payable in accordance with the undertaking at the relevant time despite any amount previously paid under the undertaking less any amount that would be repayable as a liability by the licensee if money were paid.

approved foreign market means each of the following:

- (a) American Stock Exchange;
- (b) Borsa Italiana;

- (c) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
- (d) Euronext Amsterdam;
- (e) Euronext Paris;
- (f) Frankfurt Stock Exchange;
- (g) Hong Kong Stock Exchange;
- (h) JSE;
- (i) London Stock Exchange;
- (j) NASDAQ Stock Market;
- (k) New York Stock Exchange;
- (l) New Zealand Exchange;
- (m) Singapore Exchange;
- (n) SWX Swiss Exchange;
- (o) Tokyo Stock Exchange;
- (p) Toronto Stock Exchange;
- (q) a foreign market approved in writing for the purpose of this definition by ASIC.

average RE and IDPS revenue means:

- (a) for a financial services licensee in its first financial year, the licensee's forecast of its RE and IDPS revenue from the calculation date for the remainder of the first financial year pro-rated to a 12 month period; and
- (b) for a financial services licensee in its second financial year of being authorised to operate a registered scheme as a responsible entity or an IDPS—the aggregate of the licensee's:
 - (i) estimate of its RE and IDPS revenue for the second financial year to date; and
 - (ii) forecast of its RE and IDPS revenue for the remainder of the second financial year; and

- (c) for a financial services licensee in its third financial year of being authorised to operate a registered scheme as a responsible entity or an IDPS—the average of:
 - (i) the aggregate of the licensee's:
 - (A) estimate of its RE and IDPS revenue for the third financial year to date; and
 - (B) forecast of its RE and IDPS revenue for the remainder of the third financial year; and
 - (ii) the licensee's RE and IDPS revenue for its second financial year; and
- (d) for all subsequent financial years of a financial services licensee—the average of:
 - (i) the aggregate of the licensee's:
 - (A) estimate of its RE and IDPS revenue for the current financial year to date; and
 - (B) forecast of its RE and IDPS revenue for the remainder of the current financial year; and
 - (ii) the licensee's RE and IDPS revenue for the last preceding financial year; and
 - (iii) the licensee's RE and IDPS revenue for the second preceding financial year.

average value of scheme and IDPS property means, in relation to registered schemes and IDPSs operated by a financial services licensee, the greater of:

- (a) the current value of scheme and IDPS property; and
- (b) the value of scheme and IDPS property in the following circumstances:
 - (i) for a licensee in its first financial year—the average of:
 - (A) the value of scheme and IDPS property at the end of each calendar month since the calculation date; and

- (B) the forecast value of scheme and IDPS property at the end of each calendar month for the remainder of the first financial year; and
- (ii) for a licensee in its second financial year of being authorised to operate a registered scheme as a responsible entity or an IDPS—the average of:
 - (A) the value of scheme and IDPS property at the end of each calendar month since the calculation date; and
 - (B) the forecast value of scheme and IDPS property at the end of each calendar month for the remainder of the second financial year; and
- (iii) for all subsequent financial years of a licensee after the first 2 financial years of operation of a registered scheme as a responsible entity or an IDPS—the average of:
 - (A) the value of scheme and IDPS property at the end of each calendar month since the beginning of the second preceding financial year; and
 - (B) the forecast value of scheme and IDPS property at the end of each calendar month for the remainder of the current financial year.

calculation date means, in relation to a financial services licensee, the day on which the licensee is authorised to operate a registered scheme or an IDPS.

cash or cash equivalents means:

- (a) cash on hand, demand deposits and money deposited with an Australian ADI that is available for immediate withdrawal; and
- (b) short-term, highly liquid investments that are readily convertible to known amounts of cash that are subject to an insignificant risk of changes in value; and
- (c) the value of any eligible undertaking provided by an eligible provider; and
- (d) a commitment by an eligible provider to provide cash upon request within 5 business days:

- (i) which will not expire within the next 6 months and which cannot be withdrawn by the provider without giving at least 6 months written notice to the person to whom the commitment is made; and
- (ii) in relation to which any cash provided is not repayable for at least six months.

clearing participant means a participant (as defined in section 761A in relation to a clearing and settlement facility) in the licensed CS facility operated by ASX Clear Pty Limited (***ASX Clear***) that is required to comply with, and complies with, the operating rules of ASX Clear that impose financial requirements, taking into account any waiver of those requirements by ASX Clear.

eligible custodian means:

- (a) an Australian ADI; or
- (b) a market participant or a clearing participant; or
- (c) a sub-custodian appointed by a person referred to in paragraph (a) or (b).

eligible provider means:

- (a) an Australian ADI; or
- (b) the government of the Commonwealth or of a State or Territory government or the government of a country that is a member of the Organisation for Economic Co-operation and Development or an agency or instrumentality of such a government; or
- (c) a foreign deposit-taking institution:
 - (i) that is regulated by a regulator approved in writing by ASIC for this purpose; or
 - (ii) approved in writing by ASIC for this purpose; or
- (d) an Australian CS facility licensee within the meaning of section 761A; or
- (e) an entity approved by ASIC in writing for the purpose of this paragraph.

eligible undertaking means in relation to a financial services licensee:

- (a) an enforceable and unqualified undertaking by an eligible provider, expressed to be irrevocable without the written consent of ASIC, to pay, on written demand by the licensee, a certain amount (disregarding any part previously paid or any amount that would be repayable as a liability by the licensee if money were paid); or
- (b) an undertaking approved in writing by ASIC as an eligible undertaking.

excluded assets means in relation to a financial services licensee:

- (a) intangible assets (excluding, for the avoidance of doubt, a deferred tax asset); and
- (b) receivables from, or assets invested in, any person who:
 - (i) is an associate of the licensee; or
 - (ii) was an associate of the licensee at the time the liability was incurred or the investment was made; or
 - (iii) became liable to the licensee in connection with the acquisition of interests in a managed investment scheme operated by the licensee; and
- (c) assets:
 - (i) held as a beneficial interest or an interest in a managed investment scheme; or
 - (ii) invested in a superannuation product in respect of which the licensee or an associate may exercise any form of power or control; and
- (d) receivables from a trustee of a trust in respect of which the licensee or an associate may exercise any form of power or control;

but, despite anything in the paragraphs above, does not include the following:

- (e) a receivable mentioned in paragraph (b) or (d):
 - (i) to the extent that it is adequately secured; or
 - (ii) to which all of the following apply:

- (A) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis;
 - (B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee;
 - (C) the value of the receivable (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; or
- (iii) to which all of the following apply:
- (A) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis;
 - (B) the licensee has no reason to believe that any amount invested in the licensee would not have been invested if the transaction that caused the receivable had not taken place or were not at the time of the investment expected to take place;
 - (C) the licensee has no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee;
 - (D) the total value of the receivables under this subparagraph is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph; or
- (iv) to which ASIC has given its consent in writing to the licensee treating the receivable as not being an excluded asset; or
- (v) to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of or in relation to:
- (A) a superannuation entity;
 - (B) an IDPS;
 - (C) a registered scheme,

to the extent that the receivable:

- (D) exceeds amounts invested by the entity, IDPS or scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the entity, IDPS or scheme to:
 - (I) the licensee; or
 - (II) a body corporate the licensee controls; or
 - (III) a body corporate that controls the licensee; or
 - (IV) a body corporate that the licensee's controller controls; and
 - (E) if receivable by way of fees, represents no more than the amount of fees owing for the previous 3 months; and
 - (F) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months; and
- (f) an asset mentioned in paragraph (c) to the extent it is a managed investment product unless any part of the amount invested is, in substance, directly or indirectly invested in the licensee.

first financial year means, in relation to a financial services licensee, the financial year in which the calculation date occurs.

IDPS has the same meaning as in ASIC Class Order [CO 13/763].

IDPS property means, in relation to an IDPS, property acquired or held through the IDPS, other than property held by a client of the IDPS.

incidental provider has the same meaning as in section 912AC.

liquid assets means in relation to a financial services licensee:

- (a) cash or cash equivalents other than a commitment of the kind referred to in paragraph (d) of the definition of ***cash or cash equivalents***; and
- (b) assets that the licensee can reasonably expect to realise for their market value within 6 months,

that are free from encumbrances and, in the case of receivables, free from any right of set-off.

market participant means a participant as defined in section 761A in relation to a financial market:

- (a) in the licensed financial market operated by ASX Limited that is required to comply with, and complies with the rules of the *ASIC Market Integrity Rules (ASX Market) 2010* that impose financial requirements, taking into account any waiver by ASIC; or
- (b) in the licensed financial market operated by Chi-X Australia Pty Limited that is required to comply with, and complies with the rules of the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* that impose financial requirements, taking into account any waiver by ASIC; or
- (c) in the licensed financial market operated by Australian Securities Exchange Limited (*ASX 24 market*) that:
 - (i) restricts its financial services business and its business of acting as a custodian in relation to a registered scheme to participating in the ASX 24 market and incidental business; and
 - (ii) is required to comply with, and complies with, the rules of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* that impose financial requirements, taking into account any waiver by ASIC.

NTA means adjusted assets minus adjusted liabilities.

RE and IDPS revenue means, in relation to a financial services licensee:

- (a) the licensee's revenue (within the meaning given by the accounting standards); and
- (b) to the extent it is not the licensee's revenue (within the meaning of the accounting standards)—any amount paid or payable out of scheme property for the performance of the obligations imposed on the licensee as a responsible entity in connection with the registered schemes it operates, even if those obligations are performed by another entity (including asset management, investment management, property management, scheme administration and custodial and trustee services); and
- (c) to the extent it is not the licensee's revenue (within the meaning of the accounting standards)—any amount paid or payable out of IDPS

property for the performance of the obligations imposed on the licensee as an operator of an IDPS, even if those obligations are performed by another entity.

Note: An amount under paragraph (b) or (c) excludes any audit fees paid or payable to an auditor engaged to meet any audit requirements under the Act.

regulated trust account means:

- (a) a trust account maintained by a licensed trustee company within the meaning of Chapter 5D or the Public Trustee of a State or Territory; or
- (b) a trust account maintained by a solicitor unless moneys in the account include moneys that are excluded from regulation as trust money under laws of the State or Territory relating to legal practitioners that are relevant to the operation of the trust account by the solicitor; or
- (c) a trust account maintained by a real estate agent under the law of a State or Territory; or
- (d) a trust account maintained by an entity other than the licensee and that provides protections similar to the accounts described in paragraphs (a) to (c), and is approved in writing by ASIC for this purpose.

serviced strata scheme means a registered scheme that involves owners of strata title units, community title interests or similar real property interests at the one real property location, making their units or interests in real property available to a manager for use as part of a serviced apartment, hotel, motel or resort complex.

special custody assets means, in relation to a registered scheme or an IDPS operated by a financial services licensee, any of the following:

- (a) for a serviced strata scheme, cash held in a regulated trust account for the purposes of:
 - (i) refurbishment or improvement of real property associated with the scheme; or
 - (ii) alleviating seasonal fluctuations in payments of income from the scheme in accordance with provisions in the constitution;

provided that no more is held than the licensee reasonably considers necessary for the relevant purpose;

- (b) currency and chattels (other than documents) that it would not be reasonably practicable for a person other than the licensee to hold;

- (c) funds received from members of the scheme or clients of the IDPS within the previous 6 months held in a regulated trust account;
- (d) cash held for up to 3 months in an account with an Australian ADI styled as a trust account that is audited at least once every 6 months by a registered company auditor where the auditor's report states that in the auditor's opinion the account has been operated in accordance with the trust:
 - (i) pending payment to members of the scheme or clients of the IDPS; or
 - (ii) to meet expected expenses (not including investments) over a 3 month period; or
 - (iii) pending application in acquiring a mortgage and paying any fees and costs incidental to the acquisition;
- (e) contractual, lease or licence rights that are not assignable except with the consent of the member or client or that it would not be reasonably practicable to assign and any documents evidencing those contractual, lease or licence rights;
- (f) assets of trivial value;
- (g) land and other real property of a time-sharing scheme and levies of a time-sharing scheme which are held in an account with an Australian ADI styled as a trust account that is audited at least once every six months by a registered company auditor where the report from the auditor is provided to the responsible entity's board or compliance committee and states that in the auditor's opinion the account has been operated in accordance with the trust;
- (g) mortgages or documents of title held under a mortgage where:
 - (i) particular members or clients have a specific beneficial or legal interest in the mortgage; and
 - (ii) the mortgage was acquired after disclosure in writing to the relevant members or clients (at the time of the acquisition) of all information that would have been required to be in a Product Disclosure Statement (or in relation to mortgages acquired before Division 2 of Part 7.9 applied to interests in the registered scheme, a disclosure document under Chapter 6D) if an offer of interests in the registered scheme conferring rights in connection

with that mortgage had been made immediately prior to the mortgage;

- (iii) either:
 - (A) the mortgage was acquired on the specific direction of the relevant members or clients (at the time of acquisition of the interest); or
 - (B) the members or clients are able to withdraw from that mortgage for a period of 14 days commencing on the date of disclosure under subparagraph (ii);
- (iv) it is not reasonable to expect that the mortgage will be sold prior to its discharge.

stapled group means the group of entities consisting of:

- (a) one or more stapled issuers who are issuers of securities or managed investment products that must be transferred together; and
- (b) all wholly-owned entities of the stapled issuers.

stapled issuer means an entity a security or managed investment product of which under the terms on which it is traded on a prescribed financial market or under the constitution of the entity or under the terms of issue, must be transferred together with a security or managed investment product of one or more other entities.

Tier \$500,000 class assets means, in relation to a registered scheme:

- (a) real property (including mortgages or leases over or licences in relation to real property) that is intended to be kept for the whole duration of the scheme or, the relevant mortgage; and
- (b) physical assets which as a matter of reasonable practice can be held by a custodian (such as currency, valuables or precious metals); and
- (c) funds held in a regulated trust account which were received from members within the following periods:
 - (i) if held for the purposes of the initial investment by the responsible entity as part of the scheme—the previous 6 months; or

- (ii) if held pending payment of expenses of the scheme—the previous 13 months; and
- (d) special custody assets.

value of scheme and IDPS property means, in relation to a financial services licensee at a time, the aggregate of:

- (a) the value of the scheme property and any other assets (including mortgages held by members of a mortgage scheme and managed as part of the scheme) of the registered schemes operated by the licensee as responsible entity; and
- (b) the value of the IDPS property of the IDPSs operated by the licensee;

determined as follows:

 - (c) in the case of assets of a scheme that would be recognised in preparing a balance sheet for members under Chapter 2M – the value as if at that time such a balance sheet was being prepared; and
 - (d) in the case of any other scheme property or IDPS property – its market value at that time.”.

Revocation and transitional

5. ASIC Class Order [CO 11/1140] is revoked.
6. If, immediately before the commencement of this instrument, a person held an Australian financial services licence that authorises the person to operate a registered scheme as a responsible entity or an IDPS:
 - (a) paragraph 4 of this instrument does not apply to the person until the earlier of (the ***application date***):
 - (i) the person both lodging with ASIC and publishing on its website a notice that it will rely on this instrument; and
 - (ii) 1 July 2014; and

Note: A notice under sub-subparagraph 6(a)(i) cannot be revoked.

- (b) if the person was authorised to operate a registered scheme, ASIC Class Order [CO 11/1140] as in force immediately before the commencement of this instrument despite paragraph 5 continues to apply to the person in relation to the period ending immediately before the application date.

7. Until 1 July 2014, Part 7.9 of the Act applies to a person covered by subparagraph (6)(a) as if provisions of that Part were modified or varied by inserting after section 912AA:

“912AAA Notice of reliance

A person that has elected to rely on ASIC Class Order [CO 13/760] must publish and maintain on its website a notice that it will rely on that instrument.”.

Interpretation

8. In this instrument, **IDPS** has the same meaning as in ASIC Class Order [CO 13/763].

Dated this 28th day of June 2013

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