



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Corporations (Amendment) Instrument 2020/1064**

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I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 9 December 2020

Anthony Graham

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## **Part 1—Preliminary**

### **1 Name of legislative instrument**

This is the *ASIC Corporations (Amendment) Instrument 2020/1064*.

### **2 Commencement**

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### **3 Authority**

This instrument is made under subsections 601QA(1), 926A(2) and 1020F(1) of the *Corporations Act 2001*.

### **4 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*

#### 1 Section 4

Omit the section, substitute:

#### 4 Definitions

*Act* means the *Corporations Act 2001*.

*approved hardship member* has the meaning given by subsection 601GA(1B) of the Act as notionally inserted by this instrument.

*defaulting member* has the meaning given by subsection 601GA(1B) of the Act as notionally inserted by this instrument.

*registered time-sharing scheme* means a time-sharing scheme:

- (a) registered in accordance with section 601ED of the Act; and
- (b) that has not at any time been promoted by its operator as a means of generating a financial return other than by way of a rental pool.

*rental pool*, in relation to a time-sharing scheme, means an arrangement conducted by the operator of the scheme where members of the scheme authorise the operator to manage and rent to third parties the rights to use property under the scheme and to pool the rental income received for pro-rata distribution to each holder.

#### 2 Section 8

After the section, insert:

#### 8A Changing the constitution—hardship withdrawals

Chapter 5C of the Act applies to a responsible entity of a registered time-sharing scheme as if Part 5C.3 were modified or varied by:

- (a) before subsection 601GC(2) inserting:

“(1B) The constitution of a registered time-sharing scheme (as defined in *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*) may also be modified, or repealed and replaced with a new constitution, by the responsible entity in accordance with section 601GCD.”; and

- (b) inserting the following section in its relative order in Part 5C.3:

**“601GCD Changing the constitution of a registered time-sharing scheme to enable hardship withdrawals**

- (1) Subject to subsection (2), the responsible entity of a registered time-sharing scheme (as defined in *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*) may modify the constitution of the scheme to:
  - (a) include provisions to the effect of paragraphs 601GA(1A)(a) to (l) (as notionally inserted, or to be notionally inserted, as a result of *ASIC Corporations (Amendment) Instrument 2020/1064*); and
  - (b) make any other modifications that the responsible entity reasonably considers are necessary for, or incidental to, the responsible entity including provisions to the effect of paragraphs 601GA(1A)(a) to (l).
- (2) The responsible entity may modify the constitution under subsection (1) where:
  - (a) the responsible entity has given members of the scheme written notice of the modification by sending each member by post or by email a copy of a notice that complies with subsection (3); and
  - (b) the responsible entity has published a notice that complies with subsection (3) on its website:
    - (i) no later than the date it gives written notice under paragraph (a); and
    - (ii) in a way that is likely to come to the attention of a person looking for information about the scheme on the website; and
  - (c) as at a date (*relevant date*) that is:
    - (i) no later than the date it gives written notice under paragraph (a) and (b); and
    - (ii) at least 14 days after the responsible entity gives notice to members under paragraph (a);

the responsible entity has not received requests from members with at least 5% of the votes that may be cast on the resolution referred to in paragraph (3)(b) to call and arrange to hold a meeting as specified in the notice.
- (3) A notice complies with this subsection if it:

- (a) sets out a summary of the reason for, and the effect of, the proposed modification of the constitution; and
  - (b) states that the responsible entity will modify the constitution as proposed unless it receives requests to call and arrange to hold a meeting of the scheme's members to consider and vote on a special resolution to modify the constitution as proposed:
    - (i) from members with at least 5% of the votes that may be cast on the resolution; and
    - (ii) by the relevant date; and
  - (c) states that a request referred to in paragraph (b) must be made in writing and may be sent to a specified email address of the responsible entity; and
  - (d) is worded and presented in a clear, concise and effective manner.
- (4) Unless the scheme's constitution provides otherwise, a notice sent by post is taken to be given 3 days after it is posted. A notice sent by email is taken to be given on the business day after it is sent.
- (5) The responsible entity may repeal and replace the constitution instead of modifying it where:
- (a) the replacement constitution has the effect that the constitution would have had if it had instead been modified in accordance with subsection (1); and
  - (b) subsection (2) had been satisfied as if references in subsections (2) and (3) to modifying the constitution included references to repealing and replacing it.
- (6) The responsible entity may modify or repeal and replace the constitution under subsections (1) and (5) even if the constitution includes provisions to the effect that it may only be modified or repealed and replaced in accordance with paragraphs 601GC(1)(a) or (b) or provisions to the effect of those paragraphs.
- (7) If the responsible entity:
- (a) decides not to give members written notice (**modification notice**) under paragraph (2)(a) or under subsection (5) as it applies in relation to paragraph (2)(a); or

- (b) does not give members a modification notice by 30 September 2021;

the responsible entity must give each member by post or by email written notice that complies with subsection (8) by no later than:

- (c) if paragraph (a) applies—21 days after making the decision; and
  - (d) if paragraph (b) applies—21 October 2021.
- (8) A notice complies with this subsection if it includes an explanation of the following:
- (a) why the responsible entity has decided not to give, or has not given, members a modification notice; and
  - (b) the effect for members of the responsible entity not giving members a modification notice compared to the situation if the responsible entity had given a modification notice; and
  - (c) that under section 252D, members holding interests carrying at least 5% of the votes that may be cast at a meeting of scheme may call and arrange to hold a meeting of the scheme’s members to consider and vote on a special resolution to modify or repeal and replace the constitution the constitution to include provisions to the effect of paragraphs 601GA(1A)(a) to (l) at the expense of those members.

Note: The responsible entity must act in the best interests of the members in exercising the power in subsections (1) and (5) to modify, or repeal and replace the constitution: see paragraph 601FC(1)(c).”.

### 3 Section 9

Omit the section, substitute:

#### 9 Rental pools covered by ASIC Class Order [CO 02/237]

- (1) Subsections (2) and (3) apply in relation to a person that operates or provides financial services in relation to an interest in a rental pool that was operated or purportedly was operated in reliance on ASIC Class Order [CO 02/237] (the *old class order*) immediately before the repeal of that class order.
- (2) The old class order as in force immediately before its repeal continues to apply to the person despite its repeal as if the following amendments were made:

- (a) in the First Exemption at subparagraph 1(e) omit “once every 6 months”, and substitute “annually”;
  - (b) in the Second Exemption at paragraph (b) omit “once every 6 months”, and substitute “annually”.
- (3) The exemption (including any related conditions and as affected by subsection (2)) in the old class from the requirement to hold an Australian financial services licence that is expressed to be made under paragraph 911A(2)(l) has effect under section 926A of the Act instead.

## 10 Application of amendments made by *Corporations (Amendment) Instrument 2020/1064*

- (1) The amendments made by Schedule 1 to the *ASIC Corporations (Amendment) Instrument 2020/1064* (**amending instrument**) apply on and from commencement of the amending instrument.
- (2) The amendments made by Schedule 2 to the amending instrument apply on and from commencement of the amending instrument in relation to a registered time-sharing scheme that was being not operated immediately before the commencement of the amending instrument.

Note: Until the amendments made by Schedule 2 of the amending instrument apply in relation to a scheme, among other matters, the provisions of this instrument that were in force immediately before commencement of the amending instrument and that are omitted by those amendments will continue to apply in relation to the scheme.

- (3) The amendments made by Schedule 2 to the amending instrument apply, in relation to a registered time-sharing scheme that was being operated immediately before the commencement of the amending instrument, on and from the first to occur of:
  - (a) the constitution of the scheme being modified or repealed and replaced so that it includes provisions (**hardship provisions**) to the effect of paragraphs 601GA(1A)(a) to (l) of the Act (as notionally inserted or to be notionally inserted into the Act as a result of the amending instrument);
  - (b) unless subsection (4) applies in relation to the scheme—30 September 2021.
- (4) This subsection applies in relation to a registered time-sharing scheme that was being operated immediately before the commencement of the amending instrument if either of the following apply:
  - (a) the responsible entity decides that it would not be in the best interest of members of the scheme for the constitution of the



- scheme to be modified or repealed and replaced to include the hardship provisions and notifies members of that decision on or before 30 September 2021;
- (b) on or before 30 September 2021, members of the scheme vote on, but do not pass, a special resolution to modify or repeal and replace the constitution to include the hardship provisions.
- (5) The amendments made by Schedule 3 to the amending instrument apply in relation to a registered time-sharing scheme on and from the first to occur of:
- (a) the amendments made by Schedule 2 to the amending instrument applying in relation to the scheme;
  - (b) 30 September 2021.

## Schedule 2—Amendments

### *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*

#### **1 Section 5**

Omit the section, substitute:

#### **5 Exemption for forfeiture for non-payment**

A responsible entity of a registered time-sharing scheme does not have to comply with paragraph 601FG(1)(a) of the Act in relation to the acquisition and holding by the responsible entity of an interest in the scheme that is forfeited by a defaulting member to the responsible entity if:

- (a) the constitution of the scheme contains provisions that are to the effect of paragraphs 601GA(1A)(a) to (l) of the Act (as notionally inserted by this instrument); and
- (b) the acquisition and holding is in accordance with those provisions.

#### **5A Equality of treatment**

A responsible entity of a registered time-sharing scheme does not have to comply with paragraph 601FC(1)(d) of the Act to the extent the requirement to treat members in the same class equally would prevent the responsible entity from allowing an approved hardship member to withdraw in accordance with provisions of the constitution of the scheme that are to the effect of paragraphs 601GA(1A)(b) to (l) of the Act as notionally inserted by this instrument.

#### **2 Section 7**

Omit the section, substitute:

#### **7 Disclosure of prices for the purchase of time-sharing interests**

Chapter 5C of the Act applies to a responsible entity of a registered time-sharing scheme as if section 601GA were modified or varied as follows:

- (a) in subsection (1), omit “The”, substitute “Subject to subsection (1A), the”;
- (b) after subsection (1) insert:

“(1A) The constitution of a registered time-sharing scheme need not make adequate provision for the consideration that is to be paid to acquire an interest in the scheme if the constitution contains provisions to the effect of the following:

*Acquisition price*

- (a) the consideration that is to be paid to acquire an interest in the scheme is:
  - (i) the price stated in the Product Disclosure Statement for the interests that is in use at the time of the acquisition; or
  - (ii) in relation to the sale of an interest of a defaulting member or approved hardship member by the responsible entity under a power of sale or due to forfeiture to the responsible entity—a price specified in paragraph (k);

*Hardship withdrawals*

- (b) a member may give the responsible entity a hardship application, provided that if the responsible entity has received a hardship application (***previous hardship application***) from the member within the previous 3 months and has considered the previous hardship application:
  - (i) the responsible entity has a discretion whether or not to consider the current hardship application;
  - (ii) if the responsible entity decides not to consider the current hardship application:
    - (A) the responsible entity must notify the member in writing as soon as possible of its decision; and
    - (B) paragraphs (c) to (l) do not apply in relation to the hardship application;
- (c) if the responsible entity receives a hardship application, the responsible entity:
  - (i) must, as soon as possible after receipt of the hardship application, give the member a written confirmation that the hardship application has been received; and
  - (ii) must consider whether further information is required to determine whether the member has met the hardship criteria and, if so, give a notice to the member by no later than 30 days after the day the responsible entity receives the hardship application:

- (A) requiring further information; and
  - (B) allowing the member at least 21 days to respond; and
  - (iii) must, before the end of the decision period, make a decision whether the member has met the hardship criteria and, if so, whether to allow the member to withdraw from the scheme; and
- Note 1: If the responsible entity allows the member to withdraw from the scheme, the member will be an approved hardship member: see subsection (1B).
- Note 2: See section 601GAH in relation to the discretion of the responsible entity to allow a member to withdraw from the scheme.
- (iv) must give the member a decision notice within 7 days of making the decision; and
  - (v) unless the responsible entity has given the member a decision notice, must not require the member to make payment of any amounts due for payment on or after the date the responsible entity received the member's hardship application; and
  - (vi) may, to the extent provided for in the constitution and until the responsible entity gives the member a decision notice, suspend the rights of the member to use property under the scheme, receive distributions under the scheme or otherwise enjoy benefits produced by the scheme;
- (d) if the responsible entity decides a member has not met the hardship criteria, the decision notice must include:
- (i) reasons why the responsible entity has decided that the member has not met the hardship criteria; and
  - (ii) an explanation that, as the member has not met the hardship criteria, the member is not able to withdraw from the scheme;
  - (iii) details of the scheme's internal and external dispute resolution schemes;
- (e) if the responsible entity decides a member has met the hardship criteria but not to allow the member to withdraw from the scheme, the decision notice must include:

- (i) reasons why the responsible entity has decided not to allow the member to withdraw from the scheme; and
  - (ii) details of the internal and external dispute resolution schemes;
- (f) an approved hardship member:
- (i) has a right to withdraw from the scheme in accordance with paragraph (h); and
  - (ii) has no liability to make payment of any amounts due for payment in relation to the scheme on or after the date the responsible entity received the member's hardship application (including payment of any shortfall from the sale process referred to in paragraph (k)) ; and
  - (iii) if the approved hardship member was a defaulting member, has no liability to make payment of any amounts that are overdue for payment;
- (g) the responsible entity may, to the extent provided for in the constitution, suspend the rights of an approved hardship member to use property under the scheme, receive distributions under the scheme or otherwise enjoy benefits produced by the scheme;

*Forfeiture and sale circumstances*

- (h) subject to paragraphs (i) to (l), the responsible entity may, in accordance with the constitution, forfeit the interest of a defaulting member to the responsible entity, or exercise a power of sale of a defaulting member's interest on behalf of a defaulting member;
- (i) if the responsible entity receives a hardship application from a defaulting member, the responsible entity must not forfeit or exercise a power of sale of the interests of that member unless the responsible entity has:
- (i) decided to reject the member's hardship application; and
  - (ii) given the member a decision notice within the time required under subparagraph (c)(iv);

*Sale process for defaulting member and approved hardship member*

- (j) the responsible entity must use reasonable endeavours to sell:
  - (i) the interest of a defaulting member if the interest has been forfeited to the responsible entity or if the responsible entity has decided to exercise a power of sale of the interest on behalf of the defaulting member; and
  - (ii) the interest of an approved hardship member;
- (k) the price for which the responsible entity sells the interest of a defaulting member or an approved hardship member must be:
  - (i) if a Product Disclosure Statement has been given in accordance with Part 7.9 at any time in the 12 months before the sale for interests in the scheme that are in the same class—the price shown in the Product Disclosure Statement most recently given; or
  - (ii) otherwise—a fair market price obtained by the responsible entity using reasonable endeavours;
- (l) the responsible entity must apply any proceeds of sale of a defaulting member or approved hardship member, or of other exploitation by it of the interest of the defaulting member or approved hardship member (including any proceeds of rental of, or licensing to use, the scheme property that relates to the interest of the member) in the following order:
  - (i) in payment of reasonable costs of the sale or exploitation;
  - (ii) in payment of any reasonable administrative costs arising from the forfeiture, sale or withdrawal;
  - (iii) in payment of any outstanding amounts due from the member as scheme property:
    - (A) for a defaulting member—that were outstanding as at the date the interest is sold; or
    - (B) for an approved hardship member—that were outstanding as at the date the responsible entity received the member's hardship application;

- (iv) in payment of any amounts that were overdue for payment by the member to the responsible entity other than as scheme property, or that were overdue for payment to any other person in relation to the member's participation in the scheme on:
  - (A) for a defaulting member—the date the interest is sold; or
  - (B) for an approved hardship member—the date the responsible entity received the member's hardship application;
- (v) in payment of any amounts payable by or on behalf of the defaulting member or approved hardship member to a person in relation to a liability of the member to the person for amounts with respect to financial accommodation provided by the person in connection with the member's acquisition of the interest;
- (vi) in payment of any remaining amount to the defaulting member or approved hardship member.

### *Interpretation*

(1B) For the purposes of subsections (1A) to (1C):

***approved hardship member*** means a member of a registered time-sharing scheme who has received a decision notice from the responsible entity stating that the responsible entity has approved the member's hardship application.

***decision notice*** means a written notice of the responsible entity's decision in relation to a hardship application.

***decision period*** means, in relation to a hardship application, for each circumstance set out in column 2 of the following table, the period set out in column 3.

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#### **Decision period for giving a decision notice**

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<b>Item</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>circumstance</b>	<b>decision period</b>
1	The responsible entity does not require further information to make a decision.	30 days starting on the day the responsible entity receives the hardship application

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<b>Decision period for giving a decision notice</b>		
<b>Item</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>circumstance</b>	<b>decision period</b>
2	The responsible entity requires further information, gives a notice requiring further information by a specified date, and does not receive the information from the member by that specified date.	30 days starting on the specified date
3	The responsible entity requires further information, gives a notice requiring further information by a specified date, and receives the further information on or before the date.	30 days starting on the day the responsible entity receives the further information

***defaulting member*** means a member of a registered time-sharing scheme:

- (a) whose interest may be forfeited to the responsible entity under the constitution; or
- (b) on whose behalf the responsible entity may sell the interest of the member under the constitution;

as a result of a failure by the member to remedy the non-payment of an amount due to:

- (c) the responsible entity as scheme property, including, amounts payable to acquire the interest or a levy; or
- (d) a person with respect to financial accommodation provided to the member in connection with the acquisition by the member of the interest;

provided that a member who is an approved hardship member is not a defaulting member even if paragraph (c) or (d) is satisfied in relation to the member.

***hardship application*** means an application by a member (or in the case of joint memberships, both members) of a registered time-sharing scheme, made to the responsible entity of the



scheme, in writing, to withdraw from the scheme because the member meets the hardship criteria.

**hardship criteria:** see subsection (1C).

**levy**, in relation to a registered time-sharing scheme, means an amount paid or payable by members of a scheme for any of the following:

- (a) the maintenance of scheme property;
- (b) operating the scheme;
- (c) other services relating to the scheme.

**registered medical practitioner** means a medical practitioner on the public register of practitioners maintained by the Australian Health Practitioner Regulation Agency or any successor agency.

**registered time-sharing scheme** means a time-sharing scheme:

- (a) registered in accordance with section 601ED; and
- (b) that has not at any time been promoted by its operator as a means of generating a financial return other than by way of a rental pool.

(1C) For the purposes of subsections (1A) to (1C), a member of a registered scheme meets the **hardship criteria** if:

- (a) any of the hardship criteria specified in column 3 of the following table are satisfied in relation to the member (or in the case of joint memberships, any one member); and
- (b) as a consequence, the member (or in the case of joint memberships, any one member) is unlikely to be able to use their interest in the scheme for the remainder of their membership.

Item	Column 2 <i>hardship category</i>	Column 3 <i>hardship criteria</i>
1	Severe Financial Hardship	The member or the member's dependant is suffering severe long-term or permanent financial hardship.
2	Compassionate	The member or dependent is

	Grounds	suffering a life-threatening illness or injury, chronic pain, or a severe, long-term chronic mental disturbance where a registered medical practitioner has provided a certified statement confirming the medical condition is of this nature.
3	Permanent Incapacity	The member has ceased gainful employment by reason of mental or physical ill-health and the member is unlikely ever again to engage in gainful employment of the type for which the member is reasonably qualified by education, training or experience.

”.

## 7A Hardship withdrawals

Chapter 5C of the Act applies to a responsible entity of a registered time-sharing scheme as if the provisions of that Chapter were varied or modified as follows:

- (a) insert the following section in its relative order in Part 5C.3:

### “601GAH Discretions in relation to hardship withdrawals

- (1) Despite subsection 601GA(4), the constitution of a registered time-sharing scheme (as defined in subsection 601GA(1B)) does not have to set out adequate procedures for making and dealing with withdrawal requests to the extent that the constitution gives the responsible entity a discretion to decide whether to allow or refuse a withdrawal request to which the following apply:
- (a) the withdrawal request is in relation to a hardship application (as defined in subsection 601GA(1B)) in accordance with provisions of the constitution to the effect of paragraphs 601GA(1A)(b) to (l);
- (b) the requirements set out in the constitution for allowing a withdrawal as a result of the hardship application are otherwise satisfied.

*Exercise of discretion must be reasonable*

- (2) The responsible entity must act reasonably in exercising a discretion covered by subsection (1).

Note: The responsible entity is also subject to its general duties under section 60IFC including the duty to act in the best interests of the members of the scheme.”

- (3) The responsible entity must ensure that it keeps records which document how and why a decision exercising a discretion covered by subsection (1) was made for a period of 7 years.”;

- (b) before subsection 601KA(3A) insert:

“(3AB) Subsection (3) and sections 601KB to 601KE do not apply to a withdrawal in accordance with provisions of the constitution of a registered time-sharing scheme (as defined in subsection 601GA(1B)) to the effect of paragraphs 601GA(1A)(b) to (l).”.

## Schedule 3—Amendments

### *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*

#### 1 After section 8A (as inserted by Schedule 1 to this instrument)

Insert the following:

#### **8B Obligations on a holder of an Australian financial services licence**

Part 7.6 (other than Divisions 4 and 8) of the Act applies to a financial services licensee as if it were modified or varied by inserting the following sections in their relative order in Division 3 of Part 7.6:

#### **“912AJ Requirements for the provision of time-sharing interests**

##### *Application*

- (1) Subsections (3) to (19) apply to a licensee that is the responsible entity of a registered time-sharing scheme.
- (2) Subsections (3) to (9) also apply to a licensee that is an associate of a responsible entity of a registered time-sharing scheme if the licensee:
  - (a) holds an Australian financial services licence authorising it to advise and deal in interests in a registered time-sharing scheme; and
  - (b) provides financial product advice to consumers about interests in a registered time-sharing scheme.
- (3) A licensee must ensure each application form relating to an offer of interests for issue or sale by the licensee in the registered time-sharing scheme:
  - (a) is accompanied by a separate written statement (***cooling-off statement***) in the form set out in subsection 912AK(1); and
  - (b) is accompanied by the Product Disclosure Statement in relation to the interests if:
    - (i) in any case—a Product Disclosure Statement is required to be given to the applicant in relation to the offer under Part 7.9; or
    - (ii) in the case of an offer for sale—a Product Disclosure Statement would have been required to

be given under Part 7.9 if the offer had been an offer for issue; and

- (c) contains a question about whether the applicant intends to seek finance to pay for the interest in the time-sharing scheme and a description of an applicant's subject to finance right to withdraw under paragraph (10)(b), and how those rights may be exercised; and
  - (d) is accompanied by a separate written notice (***subject to finance notice***) in the form set out in subsection 912AK(2).
- (4) A licensee must not require an applicant to accept any finance offered to the applicant.
- (5) A licensee must take reasonable steps to ensure an applicant is given a spoken warning (***verbal consumer warning***) consisting of the words set out in subsection 912AK(4) if the applicant is present during any seminar or sales presentation (whether conducted in person or by telephone or electronic communication) relating to the registered time-sharing scheme and which involves the licensee or any of its representatives.
- (6) A licensee must not issue or sell an interest in a registered time-sharing scheme to an applicant, or allow any of its associates to do so, unless the applicant has provided the responsible entity of the scheme with the applicant's signed and dated:
- (a) acknowledgement of receipt of the cooling-off statement; and
  - (b) acknowledgement of receipt of the subject to finance notice.
- (7) A licensee must maintain written records of the following for a period of 7 years:
- (a) the name of each applicant the licensee gives a cooling-off statement to;
  - (b) the date the licensee gives a cooling-off statement to an applicant;
  - (c) each signed and dated acknowledgement of receipt of the cooling-off statement provided to the licensee by an applicant.
- (8) A licensee that receives an application for an interest in a registered time-sharing scheme from an applicant must give

the applicant copies of the following documents for the applicant to keep by the day referred to in subsection (9):

- (a) the applicant's signed and dated application form;
  - (b) a copy of the Product Disclosure Statement, if it is given under subparagraph (3)(b)(i);
  - (c) if there is no Product Disclosure Statement for the interests in use before a person acquires an interest in the scheme—the information referred to in subparagraph 13(b) in writing;
  - (d) the applicant's signed and dated acknowledgement of receipt of:
    - (i) the cooling off statement; and
    - (ii) the subject to finance notice.
- (9) The day by which a licensee must give the documents referred to in subsection (8) to an applicant is:
- (a) if the applicant has given the application to the licensee in person—the day on which the licensee receives the application; and
  - (b) otherwise—the next business day after the day the licensee receives the application.

*Cooling-off rights and subject to finance rights*

- (10) A licensee that is the responsible entity of a registered time-sharing scheme must confer on an applicant for the issue or sale of an interest in the scheme from the licensee or an associate referred to in subsection (2) a right to withdraw an application made by the applicant and a right to return the interest in the scheme (if applicable), if the applicant notifies the licensee by post, email or facsimile or in any manner described in the Product Disclosure Statement for interests in the scheme that:
- (a) (***cooling-off rights***) the applicant does not wish to proceed with the issue or sale of the interest, and the notification is made within the period (***cooling-off period***) commencing on the date on which the applicant signs the acknowledgement of receipt of the cooling-off statement and ending:

- (i) if the licensee is a member of the Australian Timeshare & Holiday Ownership Council Limited ACN 065 260 095—no less than 7 days later; or
  - (ii) otherwise—no less than 14 days later; or
- (b) (***subject to finance rights***) the applicant:
- (i) failed to obtain finance; or
  - (ii) decided not to proceed with an application for finance; or
  - (iii) rejected an offer of finance.

*Effect of the exercise of cooling-off rights and subject to finance rights by an applicant*

- (11) A licensee that is the responsible entity of a registered time-sharing scheme must make adequate arrangements to ensure that where an applicant exercises cooling-off rights during the cooling-off period or exercises subject to finance rights:
- (a) subject to paragraph (c), any contract for the acquisition of the interest in the time-sharing scheme is terminated without financial penalty to the applicant; and
  - (b) subject to paragraph (c), if the interest in the time-sharing scheme is constituted by a legal relationship between the applicant and the licensee—that relationship is terminated without financial penalty to the applicant; and
  - (c) if the applicant exercises rights by giving a notification referred to in subsection (10), the applicant is entitled to be refunded by the licensee:
    - (i) all monies paid by the applicant to the licensee in relation to the issue or sale of the interest in the scheme; and
    - (ii) the amount of any finance application fee paid to a related finance provider, less the reasonable value of the services supplied by the related finance provider up to the date the application was withdrawn or the interest was returned.
- (12) A licensee that is the responsible entity of a registered time-sharing scheme must ensure the cooling-off rights and subject to finance rights are disclosed prominently in any Product Disclosure Statement for the offer of interests in the scheme.

- (13) A licensee that is the responsible entity of a registered time-sharing scheme must ensure:
- (a) any Product Disclosure Statement for interests in the scheme and any website that is maintained by or on behalf of the responsible entity for the scheme, explains:
    - (i) if the constitution for the scheme contains provisions to the effect of paragraphs 601GA(1A)(b) to (l) as notionally inserted by *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*:
      - (A) that a member may lodge a hardship application requesting to withdraw from the scheme due to hardship;
      - (B) the hardship criteria and the procedures set out in paragraphs 601GA(1A)(b) to (l); and
    - (ii) if the constitution does not contain provisions to the effect of paragraphs 601GA(1A)(a) to (l)—the reason why the constitution has not been modified to include such provisions;
    - (iii) if applicable, that the responsible entity may forfeit a member’s interest or exercise a power of sale on behalf of a defaulting member;
    - (iv) if applicable, the responsible entity’s procedures for forfeiting a member’s interest or exercising a power of sale on behalf of a defaulting member; and
  - (b) before an applicant acquires an interest in the scheme from the responsible entity or an associate at a time when no Product Disclosure Statement for the interests is in use—the person has been given the information referred to in paragraph (a) in writing.

*Written consumer warning and prominent summary of key features in the Product Disclosure Statement*

- (14) A licensee that is the responsible entity of a registered time-sharing scheme must ensure that any Product Disclosure Statement for an interest in the scheme contains:
- (a) on the front cover, a boxed warning (**written consumer warning**) in the form set out in subsection 912AK(3);



- (b) on or before page 7 of the Product Disclosure Statement (counting the cover of the Product Disclosure Statement as page 1 of the Product Disclosure Statement), the following information:
  - (i) the membership term applicable to membership of the scheme;
  - (ii) any criteria used by the responsible entity to identify persons the responsible entity considers most likely to be:
    - (A) suited to the scheme; and
    - (B) interested in acquiring an interest in the scheme through its sales presentations (if applicable);
  - (iii) a description of the restrictions on the ability of members to cease holding an interest if they no longer want to hold an interest;
  - (iv) a statement to the effect that a member should have no expectation of being able to sell the membership on any market or get any money back;
  - (v) a description of the cooling-off period, the subject to finance rights, and the cooling-off rights;
  - (vi) a description of the key limitations on access to accommodation (such as seasonality or other factors);
  - (vii) a summary of the fees and costs involved in acquiring and holding an interest that contains a cross-reference to where further information about those fees and costs can be found in the Product Disclosure Statement;
  - (viii) for schemes with a points-based program—a summary of how the program works and a cross-reference to where further information about the operation of the program can be found in the Product Disclosure Statement.

*Licensee must notify of non-compliance*

- (15) If a licensee that is the responsible entity of a registered time-sharing scheme becomes aware that it, or any of its associates, has failed to comply with any of subsections (3), (application

accompanied by a cooling-off statement and subject to finance notice), (5) (verbal consumer warning), (6) (signed and dated documents received from applicant), and (8) (give applicant copies of specified documents) in relation to the issue or sale of an interest in a time-sharing scheme to an applicant by the licensee, the licensee must immediately give a written notice to the applicant that:

- (a) describes the failure to comply; and
- (b) the applicant may give the licensee a written notice by post or by any manner described in the Product Disclosure Statement within 21 days of the date of the licensee's notice to the applicant of its failure to comply; and
- (c) specifies that if the applicant gives the licensee a notice referred to in paragraph (b):
  - (i) the applicant will be entitled to a refund from the licensee within 14 days of the notice of all amounts paid in relation to the interest in the scheme and any application for finance from a related finance provider (less the reasonable value of the services supplied by the related finance provider up to the date of termination of any contract between the applicant the credit provider and less any amount paid to the applicant under a provision of the constitution of the scheme to the effect of subparagraph 601GA(1A)(1)(vi)); and
  - (ii) any contract (other than the constitution of the scheme) between the applicant and licensee in relation to the interest in the time-sharing scheme will be void; and
  - (iii) the interest in the scheme will be returned to the responsible entity.

#### *Charges and levies*

- (16) A licensee that is the responsible entity of a registered time-sharing scheme must:
  - (a) pay and ensure that any of its associates pay the same continuing charges and levies (such as maintenance levies and special levies) as a member would be required to pay in relation to the same interest held in that scheme; and

- (b) provide to each member, for each period that the member is charged levies:
  - (i) a notice of the levies payable by the member for the period; and
  - (ii) a copy of the budget which relates to that period.
- (17) A licensee that is the responsible entity of a registered time-sharing scheme may give either or both of the documents referred to in subparagraphs (16)(b)(i) and (ii) by:
  - (a) publishing the document on the responsible entity's website; and
  - (b) notifying a member of the website publication using:
    - (i) a method of communication for the notification the member has consented to; or
    - (ii) any means a member has consented to for communication of the document.

*Application monies for an interest in a scheme relating to property development*

- (18) A licensee that is the responsible entity of a property development scheme must:
  - (a) ensure that all deposit money it receives from an applicant is deposited with an Australian ADI in an account that is held on trust for the applicant, not later than the business day following receipt and is not applied in any manner other than by payment to another such account until:
    - (i) a registrable dealing conferring title on the applicant to any real property in relation to the scheme and in relation to the interests being acquired by the applicant is lodged with the relevant authority responsible for receiving lodgements relating to real property titles; and
    - (ii) the construction of the property to which the interests being acquired by the applicant relates, and any improvements necessary to permit normal use of the property under the scheme, is substantially completed; and
  - (b) if the licensee becomes aware that:

- (i) a registrable dealing conferring title on the applicant to any real property in relation to the scheme and in relation to the interests being acquired by an applicant is not lodged with the relevant authority by the date specified in the Product Disclosure Statement; or
- (ii) the construction of the property and improvements is not substantially completed by the date specified in the Product Disclosure Statement;

return to the applicant the following:

- (iii) any deposit money paid by the applicant;
  - (iv) any income earned on the deposit money (less deductions of any fees and disbursements properly chargeable against the income);
  - (v) any amounts paid under a contract with a related finance provider; and
- (c) ensure that any amount it requires to be paid by an applicant for the acquisition of an interest in the scheme (including any amount paid under a contract with a related finance provider) is no more than 30% in value of the price payable for the interest, if the property development or part of the property development has not been completed to the stage at which it is ready for occupation.

#### *Points-based programs*

- (19) A licensee that is the responsible entity of a registered time-sharing scheme that operates a points-based program must:
- (a) ensure that issues of interests in the scheme only occur where the responsible entity is satisfied on reasonable grounds that existing members of the scheme (if any) will continue to have access to the benefits of the scheme that they would reasonably expect to have based on:
    - (i) the Product Disclosure Statements for an interest in the scheme that were in use at the times the interests were acquired by the existing members; and
    - (ii) advertisements and promotional material for an interest in the scheme that were in use at the times

- the existing member acquired interests in the scheme; and
- (b) establish and maintain compliance measures that ensure, as far as is reasonably practical, that:
- (i) for an allocation points-based program:
- (A) the pricing of the points issued to members is in accordance with the scheme's constitution and the Product Disclosure Statement for an interest in the scheme; and
- (B) the total number of points issued to members for scheme accommodation is in accordance with the scheme's constitution; and
- (C) the allocation of periodic points to each member occurs in accordance with the scheme's constitution and the relevant Product Disclosure Statement.
- (ii) for a PAYG points-based program:
- (A) the price paid for interests (including in relation to PAYG points) is in accordance with the scheme's constitution and the Product Disclosure Statement for an interest in the scheme; and
- (B) the total number of PAYG points issued to members is in accordance with the scheme's constitution; and
- (C) PAYG points are redeemed for the use of scheme property at the time the points are purchased.

*Deemed compliance with licence conditions*

- (20) A licensee referred to in subsection (1) or (2) that complies with the subsections specified in column 2 of the table below has the effect specified in column 3 of the table.

<b>Deemed compliance with licence conditions</b>		
<b>Item</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>A licensee who complies with:</b>	<b>is taken to comply with any condition to which its licence is subject dealing with:</b>
1	subsections (3), (7), (10), (11) and (13)	mandatory cooling-off periods for time-sharing schemes
2	subsection (16)	charges and levies for time-sharing schemes
3	subsection (18)	handling of application monies for property development schemes

### *Interpretation*

(21) In this section:

***allocation points-based program***, in relation to a registered time-sharing scheme, means a points-based program where a person:

- (a) becomes a member of the scheme by purchasing a specified number of points; and
- (b) as a member of the scheme, is entitled to be issued with a recurrent right to use scheme property in the form of a periodic allotment of points for:
  - (i) the duration of the scheme; or
  - (ii) a specified term of not less than 3 years.

***applicant***, in relation to a registered time-sharing scheme, means an applicant for an interest in the scheme, whether by issue or sale.

***associate***, in relation to a responsible entity of a registered time-sharing scheme, has the meaning given by section 11, but excludes a natural person who satisfies all of the following:

- (a) the person holds an interest in the scheme;
- (b) the person has notified the responsible entity that the person holds the interest for their own personal use;
- (c) the responsible entity has reasonable grounds to believe the person holds the interests for their own personal use.

***budget*** means the estimated and itemised material expected income and expenditure for a scheme for a financial year or calendar year.

***cooling-off statement***: see paragraph (3)(a).

***cooling-off rights*** means the rights referred to in paragraph (10)(a).

***hardship application*** has the same meaning as in subsection 601GA(1B) (as notionally inserted by *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*).

***hardship criteria*** has the same meaning as in subsection 601GA(1C) (as notionally inserted by *ASIC Corporations (Time-sharing Schemes) Instrument 2017/272*).

***PAYG membership***, in relation to a registered time-sharing scheme, means a membership in a PAYG points-based program.

***PAYG points***, in relation to a registered time-sharing scheme, means pay-as-you-go points that:

- (a) may only be purchased by a member of a PAYG points-based program; and
- (b) may be used by the member to obtain the right to use property to which the scheme relates at the time the points are purchased.

***PAYG points-based program***, in relation to a registered time-sharing scheme, means a points-based program where a person:

- (a) becomes a member of the scheme by purchasing a PAYG membership for a specified term of not less than 3 years; and
- (b) as a PAYG member of the scheme is entitled to purchase PAYG points for the duration of that term.

***point***, in relation to a registered time-sharing scheme, means a unit of measurement of the amount payable for the use of property to which the scheme relates.

***points-based program***, in relation to a registered time-sharing scheme, means a program where members of the scheme can use points to obtain the right to use property to which the scheme relates.

**property development scheme** means a registered time-sharing scheme where, at the time an application is received for an interest in the scheme where that interest relates to a property under construction, the relevant property has not been completed to a stage where it is ready for occupation.

**registered time-sharing scheme** means a time-sharing scheme:

- (a) registered in accordance with section 601ED; and
- (b) that has not at any time been promoted by its operator as a means of generating a financial return other than by way of a rental pool.

**related finance provider** means a person who:

- (a) is an associate of the responsible entity of a registered time-sharing scheme; and
- (b) provides loans for the purchase of interests in the scheme.

**rental pool**, in relation to a time-sharing scheme, means an arrangement conducted by the operator of the scheme where members of the scheme authorise the operator to manage and rent to third parties the rights to use property under the scheme and to pool the rental income received for pro-rata distribution to each holder.

**subject to finance notice**: see paragraph (3)(d).

**subject to finance rights** means the rights referred to in paragraph (10)(b).

## **912AK Approved forms of statements**

- (1) The statement set out below is the cooling-off statement referred to in paragraph 912AJ(3)(a).

### **COOLING-OFF PERIOD FOR THE [INSERT NAME OF SCHEME] TIME-SHARING SCHEME**

#### **Your right to change your mind**

You may withdraw your offer or terminate your agreement to purchase an interest in this time-sharing scheme within [ \*\*\* ]<sup>[1]</sup> days after the Acknowledgment Date.

The Acknowledgment Date is the date when you sign an acknowledgment that you have received all the relevant documents relating to the time-sharing scheme (these are



the application form, the Product Disclosure Statement, any loose-leaf price list, this cooling-off statement and if relevant a subject to finance notice).

### How can I exercise my right?

You may exercise your right to withdraw from the purchase by giving the responsible entity of the scheme a notice to that effect. The recommended form of written notice is attached to this statement.

You may give a notice to the responsible entity by one of the following:

- email: [*responsible entity's email address*];
- fax: [*responsible entity's fax number*]; or
- post: [*responsible entity's postal address*].

**Remember to cancel your loan application:** If you have already signed an application with an 'offer to borrow' and you exercise your cooling-off right, you also need to notify the lender that you want to withdraw your offer. You should do this as quickly as possible. If you do not, and the lender accepts your offer, you may have a binding loan contract and may not be able to cancel.

### Acknowledgment

I/We .....

acknowledge receipt of this cooling-off statement, the application form, the Product Disclosure Statement and any loose-leaf price list.

Signature(s): .....

Date: .....

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### WRITTEN NOTICE OF EXERCISE OF MY/OUR COOLING-OFF RIGHTS

To: [*insert name and address of responsible entity*]

I/We, [*insert name(s)*] hereby exercise my cooling-off rights and withdraw from my proposed purchase of interest(s) in the time-sharing scheme known as [*insert name of scheme*]. Please return all money I/We have paid by way of deposit or otherwise as soon as possible by (please tick or circle one):

- credit card (money paid by credit card will only be refunded to that card); or
- direct deposit to the bank account details below:

BSB: \_\_\_\_\_

Account number: \_\_\_\_\_

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Account name: \_\_\_\_\_

**Consumer 1**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Consumer 2 (if applicable)**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Footnotes**

<sup>1</sup> Here the responsible entity should insert the number of days of the cooling-off period. That number of days must be:

- (a) not less than seven days where the responsible entity is a member of the Australian Timeshare and Holiday Ownership Council (ATHOC) or another industry supervisory body for the time-sharing line industry approved by ASIC; and
- (b) not less than 14 days in all other cases.

(2) The statement set out below is the subject to finance notice referred to in paragraph 912AJ(3)(d).

## Timeshare cancellation: ‘Subject to finance’ notice

**You can cancel your application for a timeshare if it is ‘subject to finance’**  
– that is, if you are using a loan from a finance company to buy the timeshare –  
**even if the cooling-off period has already ended.**

You can cancel your timeshare application if you:

- have failed to obtain finance (e.g. the lender has advised you did not get a loan);
- decide not to go ahead with the loan application **and** have withdrawn the application or any ‘offer to borrow’ that you have already signed; or
- have been offered a loan but have decided not to accept the loan.

**To cancel the timeshare application:** complete the form attached to this statement and send a copy to [*responsible entity*]. Their details are on the form.

**Remember to cancel your loan application:** If you have already signed an application with an ‘offer to borrow’ and you don’t want to go ahead with the loan, you also need to notify the lender that you want to withdraw your offer. You should do this as quickly as possible. If you do not, and the lender accepts your offer, you may have a binding loan contract and may not be able to cancel.

### What is this for?

This *Timeshare cancellation: ‘Subject to finance’ notice* is **for consumers who applied for a loan** but did not get a loan or decided not to proceed with their application for the loan. It can be used to cancel a timeshare application after the cooling-off period has ended.

**Regardless of whether you applied for a loan or not**, you may cancel your timeshare application within the [*insert length – for example, ‘7’*]-day cooling-off period by completing and sending a ‘cooling-off’ notice to [*responsible entity*]. The cooling-off notice is attached to the cooling-off statement and can be found [*insert location – for example, ‘at the front of your document pack’*].

### I applied for a loan – How do I cancel?

To cancel your timeshare application under these rights, you need to make sure the loan application is not going ahead (by notifying the lender in the way described in the documentation provided by the lender) and **complete the form attached to this statement** (the *Timeshare cancellation: ‘Subject to finance’ form* on page 2) **and send a copy of it to [*responsible entity*]** by one the following:

- email: [*responsible entity’s email address*];
- fax: [*responsible entity’s fax number*]; or
- post: [*responsible entity’s postal address*].

**[If responsible entity has a website link that makes it easy for consumers to cancel in accordance with these rights, insert that link – for example ‘You can also go to [link] and follow the instructions.’]**

### Acknowledgment

I/We \_\_\_\_\_  
acknowledge receipt of this subject to finance notice.

Signatures(s): \_\_\_\_\_

Date: \_\_\_\_\_

*Want to know more about timeshare? Go to [www.moneysmart.gov.au](http://www.moneysmart.gov.au)*

## Timeshare cancellation: ‘Subject to finance’ form

Complete this form and send to *[responsible entity]* to cancel your timeshare application

To: *[name of responsible entity]*, as responsible entity of *[name of time-sharing scheme]*

I/We \_\_\_\_\_

of address \_\_\_\_\_

**do not wish to proceed** with the application to purchase an interest (timeshare) in the *[name of time-sharing scheme]* because I/we made an application for finance and have:

- **failed to obtain finance;**
- **decided not to go ahead with the loan application and have withdrawn the application and/or any ‘offer to borrow’ that I/we have already signed ; or**
- **been offered a loan but have decided not to accept the loan.**

I/We request any money paid for the timeshare application, and any money paid in relation to the finance application (if the finance provider is related to *[responsible entity]*), be returned by (please tick or circle one):

- credit card (money paid by credit card will only be refunded to that card); or
- direct deposit to the bank account details below:

BSB: \_\_\_\_\_

Account number: \_\_\_\_\_

Account name: \_\_\_\_\_

### Consumer 1

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### Consumer 2 (if applicable)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### Ways to give the subject to finance cancellation notice

Send this notice to *[responsible entity]* by emailing it to *[responsible entity’s email address]*, faxing it to *[responsible entity’s fax number]* or posting it to *[responsible entity’s postal address]*.

**Keep a copy of this notice or the information you have provided for your records**

- (3) The boxed statement set out below is the written consumer warning referred to in paragraph 912AJ(14)(a).

**Consumer warning**

**Timeshares are not appropriate for everyone. You should take time to consider whether buying this timeshare is right for you *before you sign the application form.***

It is important to understand:

1. Timeshares are generally very **long term**. The term of this timeshare is [*state period of this scheme in years or different years of the PAYG memberships*]. You will generally be required to pay **ongoing costs** for as long as you own the timeshare, regardless of whether or not you use the timeshare. [*Insert if applicable— This includes any costs of financing the purchase*].
2. [*Insert if applicable— You are **not guaranteed** the type of accommodation or location you want at the time you want.*]
3. After the cooling-off period has ended, [*insert if applicable— and you have not withdrawn your application under any ‘subject to finance’ rights,*] **it may be difficult to get out of this timeshare** and there is **no guarantee** that you will be able to sell it to another person or get any money back.
4. Timeshares are **not an investment** and you should not expect any financial return from a timeshare. You are buying an interest in a managed investment scheme for recreational use [*insert if applicable— and not buying real property*].

- (4) The statement set out below is the verbal consumer warning notice referred to in subsection 912AJ(5).

Timeshares are not appropriate for everyone. You should take time to consider whether buying this timeshare is right for you before you sign the application form.

It is important to understand:

1. Timeshares are generally very long term. The term of this timeshare is [*state period of this scheme in years or different years of the PAYG memberships*]. You will generally be required to pay ongoing costs for as long as you own the timeshare, regardless of

whether or not you use the timeshare. [*Include if applicable*— This includes any costs of financing the purchase.]

2. [*Include if applicable*— You are not guaranteed the type of accommodation or location you want at the time you want.]
3. After the cooling-off period has ended, [*include if applicable*— and you have not withdrawn your application under any subject to finance rights], there are limitations on your ability to get out of this timeshare and there is no guarantee that you will be able to sell it to another person or get any money back.
4. Timeshares are not an investment and you should not expect any financial return from a timeshare. You are buying an interest in a managed investment scheme for recreational use [*include if applicable*— and not buying real property].”.

## Schedule 4—Amendments

### *ASIC Class Order [CO 13/760] Financial requirements for responsible entities and operators of investor directed portfolio services*

#### 1 Paragraph 4 (notional subsection 912AA(11) of the Act)

Omit paragraph (g) of the definition of *special custody assets*, substitute:

- (g) for a registered time-sharing scheme:
- (i) levies held in an account with an Australian ADI styled as a trust account that is audited annually 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; and
  - (ii) cash held in an account with:
    - (A) an Australian ADI; or
    - (B) a body formed or incorporated outside of Australia which is authorised to accept deposits and is prudentially regulated by a government or agency of a government in relation to its deposit taking activities in the jurisdiction the deposits are made;

and styled as a trust account that is audited annually by a registered company auditor (or a foreign equivalent to a registered company auditor for an account held under sub-subparagraph (ii)(B)) 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; and

- (iii) general insurance products relating to real property and other assets of a time-sharing scheme; and
- (iv) interests in real property; and
- (v) interests in other registered time-sharing schemes and interests in time-sharing schemes that are exempt from complying with section 601ED where the holding of these assets is to be audited by a registered company auditor annually and a report from the auditor is provided to the responsible entity and states that in the auditor's opinion the assets have been held in accordance with the constitution for the registered time-sharing scheme; and

- (vi) interests in other time-sharing schemes established outside this jurisdiction that the responsible entity reasonably considers, for documented reasons, is subject to adequate regulation under foreign law where the holding of these assets is to be audited by a registered company auditor (or a foreign equivalent to a registered company auditor) annually and a report from the auditor is provided to the responsible entity's board or compliance committee and states that in the auditor's opinion the assets have been held in accordance with the constitution for the registered time-sharing scheme.

## 2 Paragraph 7

After the paragraph, insert:

- 7A. The amendments made by Schedule 4 to the *ASIC Corporations (Amendment) Instrument 2020/1064* (**amending instrument**) apply in relation to a financial services licensee that is the responsible entity of a registered time-sharing scheme on and from the earlier of:
  - (a) the date specified in an election made by the licensee under paragraph 7B; and
  - (b) 30 September 2021.
- 7B. A financial services licensee that is the responsible entity of a registered time-sharing scheme makes an election for the purposes of subparagraph 7A(a) if the licensee makes a written record that records:
  - (a) that the amendments made by Schedule 4 to the amending instrument will apply to the licensee on and from a specified date (not being a date before the record is made); and
  - (b) the date the record is made.

Note 1: An election under paragraph 7B cannot be withdrawn.

Note 2: An election under paragraph 7B will apply in relation to all registered time-sharing schemes of which the licensee is responsible entity.