

ASIC Class Order [CO 03/1095]

Law societies — statutory deposit accounts and public purpose funds

Issued 22/12/2003

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A number of State and Territory law societies are obliged under the relevant State and Territory legislation to operate various statutory deposit and public purpose funds. The relevant legislation partially regulates these funds.

Pending the outcome of the Federal Government's "Review of discretionary mutual funds and direct offshore foreign insurers", Class Order [CO 03/1095] grants temporary relief for these funds.

A condition of the relief is that law societies must give warnings that these funds are not licensed under the Corporations Act.

Some of the relief has been provided for the avoidance of doubt.

This instrument has effect under s911A(2)(1) of the *Corporations Act 2001*.

This compilation was prepared on 22 December 2010 taking into account amendments up to [CO 09/537]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 911A(2)(1) — Exemption

1. Under paragraph 911A(2)(1) of the *Corporations Act 2001* (the "Act") the Australian Securities and Investments Commission ("ASIC") exempts an eligible legal body from the requirement to hold an Australian financial services licence for the provision of a financial service where all of the following apply:
 - (a) the service consists of either or both of the following:
 - (i) providing a custodial or depository service;
 - (ii) dealing in financial products;
 - (b) the service is provided to the extent reasonably necessary:
 - (i) [deleted];
 - (ii) [deleted];
 - (iii) in respect of the trustees of the NSW Public Purpose

Fund — for the operation of the fund; or

- (iv) in respect of the Law Society of New South Wales – for the purpose of holding, investing and repaying money in accordance with Division 7 of Part 3.1 of the *Legal Profession Act 2004* of New South Wales; or
- (v) in respect of The Law Society of the Australian Capital Territory — for the purposes of the society performing its functions under Division 11.8 of Part 11 of the *Legal Practitioners Act 1970* of the Australian Capital Territory; or
- (vi) [deleted];
- (vii) in respect of The Law Society of Tasmania — for the purposes of performing its functions under sections 104 and 105 of the *Legal Profession Act 1993* of Tasmania; or
- (viii) in respect of The Law Society of Western Australia (Inc.) – for the purposes of performing its functions under section 3 of the *Law Society Public Purposes Trust Act 1985* of Western Australia;

for so long as and on the condition that:

- (d) [deleted];
- (e) where the service is covered by subparagraph (b)(iii) or (b)(iv) — the Law Society of New South Wales either:
 - (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by those subparagraphs, a prominent notice to the effect that the persons responsible for those matters are not licensed by ASIC under the Act; or
 - (ii) if the Law Society of New South Wales does not have an Internet website — displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i);
- (f) where the service is covered by subparagraph (b)(v) — The Law Society of the Australian Capital Territory either:
 - (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by that subparagraph, a prominent notice to the effect that the

- persons responsible for those matters are not licensed by ASIC under the Act; or
- (ii) if The Law Society of the Australian Capital Territory does not have an Internet website — displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i);
- (g) [deleted];
- (h) where the service is covered by subparagraph (b)(vii) — The Law Society of Tasmania either:
- (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by that subparagraph, a prominent notice to the effect that the persons responsible for those matters are not licensed by ASIC under the Act; or
- (ii) if The Law Society of Tasmania does not have an Internet website — displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i).
- (i) where the service is covered by subparagraph 1(b)(viii) – The Law Society of Western Australia (Inc.) either:
- (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by that subparagraph, a prominent notice to the effect that the persons responsible for those matters are not licensed by ASIC under the Act; or
- (ii) if The Law Society of Western Australia (Inc.) does not have an Internet website – displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i).

[Historical note: Para 1 amended 11/3/2004 [CO 04/266] by: inserting in para (b) subparas (v), (vi) and (vii); and by inserting paras (f), (g) and (h).

Further amended 10/8/2004 [CO 04/955] by inserting para (b)(viii) and after para (h) inserting new para (i).

Further amended 28/6//2005 [CO 05/679] by:

- deleting para (b)(i) which read ‘in respect of the Legal Practitioners Trust Committee — for the purposes of that committee performing its functions under Division 7 of Part VII of the *Legal Practitioners Act* of the Northern Territory.’

- deleting para (b)(ii) which read ‘in respect of the Law Society Northern Territory — for the operation of the Law Society Public Purpose Trust Fund established under the trust deed set out in the Schedule to the *Law Society Public Purposes Trust Act* of the Northern Territory.’
- deleting para (b)(vi) which read ‘in respect of the Queensland Law Society — for the purposes of performing its functions under section 51 of the *Legal Practitioners Act 1995* of Queensland or Part 3A of the *Queensland Law Society Act 1952* of Queensland;’
- amending para (c) by replacing ‘1 July 2005’ with ‘1 July 2006’;
- deleting para (d) which read ‘where the service is covered by subparagraph (b)(i) or (b)(ii) — the Law Society Northern Territory either:
 - (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by those subparagraphs, a prominent notice to the effect that the persons responsible for those matters are not licensed by ASIC under the Act; or
 - (ii) if the Law Society Northern Territory does not have an Internet website — displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i)’.
- deleting para (g) which read ‘where the service is covered by subparagraph (b)(vi) — the Queensland Law Society either:
 - (i) makes available on its Internet website, in a manner reasonably likely to come to the attention of a person seeking information about the matters covered by that subparagraph, a prominent notice to the effect that the persons responsible for those matters are not licensed by ASIC under the Act; or
 - (ii) if the Queensland Law Society does not have an Internet website — displays at its principal place of business, in an area likely to be accessed by members of the public, a prominent notice to the effect referred to in subparagraph (i)’.

Further amended 13/6/2006 [CO 06/468] by:

- replacing subpara 1(b)(iv). Subpara 1(b)(iv) formerly read:
 - ‘(iv) in respect of the Law Society of New South Wales — for the purposes of holding, investing and repaying money in accordance with section 65 of the *Legal Profession Act 1987* of New South Wales; or’;
- in subpara 1(c) replacing ‘1 July 2006’ with ‘1 July 2008’.

Further amended 24/6/2008 [CO 08/385] by replacing ‘1 July 2008’ with ‘1 July 2010’ in subpara 1(c).

Further amended 21/7/2009 [CO 09/537] by:

- in subsubparagraph 1(b)(viii) replacing “Western Australia; and” with “Western Australia;”;
- deleting subpara 1(c). Subpara 1(c) previously read:
 - ‘(c) the service is provided before 1 July 2010;’.

2. Under paragraph 911A(2)(l) of the Act ASIC exempts the Law Society of New South Wales from the requirement to hold an Australian financial services licence for the provision of a financial service where all of the following apply:

(a) the service consists of any or all of the following:

- (i) providing a custodial or depository service;
 - (ii) dealing in financial products;
 - (iii) providing financial product advice;
- (b) the service is provided to the trustees of the NSW Public Purpose Fund;
- (c) the service is provided to the extent reasonably necessary to enable the trustees to discharge their duties as trustees of the NSW Public Purpose Fund.

[*Historical note:* Subpara 2(c) amended 21/7/2009 [CO 09/537] by replacing “NSW Public Purpose Fund; and” with “NSW Public Purpose Fund.”.]

Subpara 2(d) deleted 21/7/2009. Subpara 2(d) formerly read:

“(d) the service is provided before 1 July 2010.”

Subpara 2(d) Previously amended 24/6/2008 by replacing ‘1 July 2008’ with ‘1 July 2010’.

Subpara 2(d) previously amended 13/6/2006 by replacing ‘1 July 2006’ with ‘1 July 2008’.]

Interpretation

In this instrument:

custodial or depository service has the meaning given by section 766E of the Act;

eligible legal body means:

- (a) [deleted]
- (b) [deleted]
- (c) the Law Society of New South Wales (ACN 000 000 699);
- (ca) The Law Society of the Australian Capital Territory;
- (cb) [deleted]
- (cc) The Law Society of Tasmania;
- (cd) The Law Society of Western Australia (Inc.)
- (d) the trustees of the NSW Public Purpose Fund;

[*Historical note:* Defn ‘eligible legal body’ amended 11/3/2004 [CO 04/266] by inserting paras (ca), (cb) and (cc).

Further amended 10/8/2004 [CO 04/955] by inserting para (cd).

Further amended 28/6/2005 [CO 05/679] by deleting paras (a) ‘Law Society Northern Territory’, (b) ‘Legal Practitioners Trust Committee’ and (cb) ‘the Queensland Law Society’.]

financial product advice has the meaning given by subsection 766B(1) of the Act;

Law Society Northern Territory [deleted]

[*Historical note:* Defn 'Law Society Northern Territory' deleted 28/6/2005 [CO 05/679]]

Legal Practitioners Trust Committee [deleted]

[*Historical note:* Defn 'Legal Practitioners Trust Committee' deleted 28/6/2005 [CO 05/679]]

NSW Public Purpose Fund means the fund established under Division 7 of Part 3.1 of the *Legal Profession Act 2004* of New South Wales.

[*Historical note:* Defn 'NSW Public Purpose Fund' replaced 13/6/2006 [CO 06/468]. Defn formerly read:

'*NSW Public Purpose Fund* means the fund established under section 69B of the *Legal Profession Act 1987* of New South Wales;'.]

Queensland Law Society [deleted]

[*Historical note:* Defn 'Queensland Law Society' inserted 11/3/2004 [CO 04/266]. Deleted 28/6/2005 [CO 05/679].]

The Law Society of Tasmania means the body corporate referred to in section 4 of the *Legal Profession Act 1993* of Tasmania;

[*Historical note:* Defn 'The Law Society of Tasmania' inserted 11/3/2004 [CO 04/266].]

The Law Society of the Australian Capital Territory means the body corporate constituted by section 4 of the *Legal Practitioners Act 1970* of the Australian Capital Territory; and

[*Historical note:* Defn 'The Law Society of the Australian Capital Territory' inserted 11/3/2004 [CO 04/266].]

The Law Society of Western Australia (Inc.) means the body corporate incorporated under the *Associations Incorporation Act 1895* of Western Australia that is referred to in section 3 of *Legal Practice Act 2003* of Western Australia.

[*Historical note:* Defn 'The Law Society of Western Australia (Inc.)' inserted 10/8/2004 [CO 04/955].]

Commencement

This instrument takes effect on gazettal.

Dated this 22nd day of December 2003

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments
Commission

Notes to ASIC Class Order [CO 03/1095]

Note 1

ASIC Class Order [CO 03/1095] (in force under s911A(2)(l) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the Tables below.

Table of Instruments

Instrument number	Date of making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 03/1095]	22/12/2003	23/12/2003	-
[CO 04/266]	11/3/2004	11/3/2004	-
[CO 04/955]	2/8/2004	10/8/2004	-
[CO 05/679]	21/6/2005	28/6/2005	-
[CO 06/468]	6/6/2006	13/6/2006	-
[CO 08/385]	19/6/2008	24/6/2008	-
[CO 09/537]	14/7/2009	21/7/2009	-

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subpara 1(b)(i)	rep. [CO 05/679]
Subpara 1(b)(ii)	rep. [CO 05/679]
Subpara 1(b)(iv)	rs. [CO 06/468]
Subpara 1(b)(v)	ad. [CO 04/266]
Subpara 1(b)(vi)	ad. [CO 04/266]; rep. [CO 05/679]
Subpara 1(b)(vii)	ad. [CO 04/266]
Subpara 1(b)(viii)	ad. [CO 04/955]; am. [CO 09/537]
Subpara 1(c)	am. [CO 05/679]; rs. [CO 06/468]; am. [CO 08/385]; rep. [CO 09/537]
Subpara 1(d)	rep. [CO 05/679]
Subpara 1(f)	ad. [CO 04/266]
Subpara 1(g)	ad. [CO 04/266]; rep. [CO 05/679]
Subpara 1(h)	ad. [CO 04/266]
Subpara 1(i)	ad. [CO 04/955]
Subpara 2(c)	am.[CO 09/537]
Subpara 2(d)	am. [CO 06/468]; am [CO 08/385]; rep. [CO 09/537]
Interpretation	am. [CO 04/266]; am. [CO 04/955]; am. [CO 05/679]; am. [CO 06/468]