

[PF 97] Pro Forma Sponsor exemption

Policy Statement 87, Policy Statement 136

Reissued 17/12/2004

This pro forma exemption from the fundraising, managed investment, debenture and licensing provisions of the Corporations Act applies to groups of charities for which there is a sponsor. See Pro Forma [PF 96] and; Policy Statement 87 [PS 87].

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 283GA(1)(a), 601QA(1)(a),
741(1)(a), 911A(2)(1), 992B(1)(a) and 1020F(1)(a) — Exemption

First exemption

The Australian Securities and Investments Commission (“ASIC”) exempts each person who is a sponsored body or a trustee of a sponsored body from compliance with:

- (a) Parts 2L.1, 2L.2, 2L.3, 2L.4 and 2L.5 of the *Corporations Act 2001* (the “Act”) under paragraph 283GA(1)(a) of the Act;
- (b) Chapter 5C of the Act under paragraph 601QA(1)(a) of the Act;
- (c) Parts 6D.2 and 6D.3 of the Act under paragraph 741(1)(a) of the Act;
- (d) sections 992A and 992AA under paragraphs 992B(1)(a) of the Act; and
- (e) Division 2 and 4 of Part 7.9 and sections 1017B and 1017G of the Act under paragraph 1020F(1)(a) of the Act,

in relation to:

- (f) an offer of a debenture;
- (g) the operation of a managed investment scheme;
- (h) an offer to issue or to arrange the issue of, an issue of, or a recommendation to acquire, an interest in a managed investment scheme,

by the sponsored body or trustee, for as long as the following conditions are met:

1. every offer document the preparation of which the relevant sponsored body was party to contains or is accompanied by a statement to the effect that:
 - (a) investors should be aware that the specified sponsored scheme is not subject to the normal requirement to have a prospectus or Product Disclosure Statement and be registered or have a trust deed under the Act;
 - (b) the scheme has not been examined or approved by ASIC;
 - (c) the investment is designed for investors who wish to promote the charitable purposes of the relevant charity and for whom the considerations of profit are not of primary relevance in the investment decision; and
 - (d) the Sponsor has indemnified the specified sponsored body against any liability arising out of a claim by investors in the scheme; and
2. there is no reference in any promotional material or offer document that the Sponsor has been approved by ASIC or that the sponsored scheme has been approved or examined by ASIC; and
3. the Sponsor does not breach a term of its deed poll dated *[date]* made in connection with the registration of, and indemnity in respect of claims against, sponsored bodies; and
4. the Sponsor does not register a charitable body as a sponsored body unless its charitable objects are the same as, or related to the charitable objects of each other sponsored body; and
5. the Sponsor has no reason to believe that it does not have and will not continue to have the means to promptly discharge any liability that may reasonably be expected to arise under its deed poll dated *[dated]*; and
6. the sponsored body includes in every offer document the preparation of which the relevant sponsored body was party a statement by the Sponsor of any arrangements by which the Sponsor may receive remuneration or financial benefits from the sponsored body other than remuneration or financial benefits that are merely trivial or the reimbursement of costs and expenses the Sponsor has incurred because they are a sponsor and for which the Sponsor has not previously been reimbursed.

And under paragraph 911A(2)(1) of the Act ASIC exempts each person who is a sponsored body or a trustee of a charitable body from the requirement to hold an Australian financial services licence for the provision of the following financial services where the conditions referred to above are met:

- (a) dealing in financial products by issuing debentures or interests in a managed investment scheme that relate to a sponsored scheme;
- (b) dealing in financial products in the ordinary course of the operation of the sponsored scheme other than by issuing financial products;
- (c) providing a custodial or depository service by holding assets of the sponsored scheme; and
- (d) providing financial product advice that is general advice included in the offer document issued in connection with the sponsored scheme.

Second exemption – other persons

Under paragraph 911A(2)(l) and 1020F(1)(a) of the Act, ASIC hereby exempts a person other than a person covered by the First Exemption from:

- (a) the requirement to hold an Australian financial services licence for the provision of financial services in relation to debentures or interests; and
- (b) Part 7.9 of the Act in relation to a recommendation to acquire and an offer to arrange the issue of an interest,

to which a sponsored scheme relates where the conditions set out in the First Exemption appear to be met except where the person is aware, or ought reasonably to be aware, that those requirements have not been met.

SCHEDULE

[identity of Sponsor]

Interpretation

For the purposes of this instrument:

“offer document” is any document which contains an offer for issue of interests or debentures in connection with a sponsored scheme;

“charitable body” is a person who is, or a body or fund which is:

- (a) exempt from income tax by virtue of sections 50-5 and 50-30 of the *Income Tax Assessment Act 1997* or provisions which correspond to them; or
- (b) a person, body or fund to whom a gift is an allowable deduction for the purposes of calculating the taxable income of a person

making the gift by virtue of section 30-15 Items 1 or 2 of the *Income Tax Assessment Act 1997* or provisions which correspond to them; or

- (c) otherwise recognised in law as being constituted for religious, educational, community or other charitable purposes;

“Sponsor” means the person identified in the Schedule to this instrument;

“sponsored body” is a charitable body registered by the Sponsor in connection with the deed poll mentioned in this instrument and whose registration has not been cancelled;

“sponsored scheme” means a scheme in respect of which a sponsored body or trustee of a sponsored body does either or both of the following:

- (a) offers debentures for issue;
- (b) offers to issue or arrange the issue of, issues, or makes a recommendation to acquire, interests in a managed investment scheme.

Dated this day of

Signed by [*name of delegate*]
as a delegate of the Australian Securities and Investments
Commission