

Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 601QA(1) – Exemption and Declaration

- 1 Under paragraph 601QA(1)(a) of the *Corporations Act 2001 (Act)* the Australian Securities and Investments Commission (*ASIC*) exempts the person specified in Schedule A from paragraph 601FC(1)(d) of the Act in relation to allowing a member of CHMF to withdraw in accordance with section 601KEA of the Act as notionally inserted by this instrument.
2. Under paragraph 601QA(1)(b) of the Act ASIC declares that Chapter 5C of the Act applies to the person specified in Schedule A in the case set out in Schedule B as if Part 5C.6 of the Act were modified or varied as follows:

(a) after subsection 601KA(3), insert:

“(3AA) Subsection (3) does not apply to withdrawal in accordance with section 601KEA.”

(b) after subsection 601KE, insert:

“601KEA Hardship Withdrawals

Power to allow withdrawal in case of member hardship

(1) The responsible entity of a registered scheme may allow a member to withdraw from the scheme in accordance with a provision of the scheme’s constitution that provides for the member to have a right to withdraw when the responsible entity is satisfied that the member has experienced hardship or is likely to experience hardship if the member is not allowed to withdraw (a ***hardship withdrawal***).

(2) The responsible entity may only allow one hardship withdrawal by a member, and must not allow a hardship withdrawal unless the responsible entity is satisfied that:

- (a) following that withdrawal the scheme property would include sufficient liquid assets for the day to day operation of the scheme; and
- (b) satisfying the hardship withdrawal request would not breach the member’s hardship withdrawal cap.

(3) For the purposes of this section the ***hardship withdrawal cap*** for a member is the lesser of:

- (a) the specific amount the subject of a member's hardship withdrawal request; and

(b) \$20,000 plus 50% of the balance of the member's interest in the scheme.

(4) If a constitution includes a provision permitting the responsible entity to exercise a discretion in relation to a hardship withdrawal the responsible entity must comply with subsections (5) to (7).
Exercise of discretion must be reasonable

(5) The responsible entity or its nominee must act reasonably in exercising a discretion covered by subsection (4).

Note: The responsible entity is also subject to its general duties under section 601FC including the duty to act in the best interests of the members of the scheme.

Documentation of exercise of discretion

(6) The responsible entity must ensure that the records which it keeps under section 988A document how and why a decision to permit or refuse a hardship withdrawal was made.

Access to and retention of documents

(7) The responsible entity must retain the documents covered by subsection (6) for 7 years after they cease to be current."

Schedule A

Challenger Managed Investments Limited ABN 94 002 835 592 in its capacity as the responsible entity of CHMF.

Schedule B

Where a decision to allow withdrawal from CHMF is based on the criteria and conditions set out in Appendix A to this instrument.

Interpretation

In this instrument:

CHMF means Challenger Howard Mortgage Fund ARSN 090 464 074

Dated this 5th day of November 2008



Signed by Kathleen Cuneo
as a delegate of the Australian Securities and Investments Commission

APPENDIX A

	<u>Hardship Withdrawal Criteria</u>	<u>Condition</u>
1	Severe Financial Hardship	The amount requested is needed to enable the member to meet reasonable and immediate living expenses for themselves or their dependents.
2	Compassionate Grounds	<p>The amount requested is needed by the member (or a member's dependent):</p> <ul style="list-style-type: none"> (a) to help pay for medical costs (and transport costs) required to treat a life-threatening illness or injury, to alleviate acute or chronic pain, or to alleviate an acute or chronic mental disturbance where 2 registered medical practitioners (at least one of whom must be a specialist) have provided certified statements confirming the medical condition to this effect; (b) to fund specific modifications (to a principal place or residence or vehicle) that are necessary to accommodate special needs arising from a severe disability; (c) to assist with funeral and other expenses related to the death of the former member or a former dependent of the member; (d) to enable the member to provide care for a person who is dying from a terminal illness, including home care; (e) to prevent a member's mortgagee (lender) from selling the member's principal place of residence; (f) to meet a binding financial obligation entered into by a member prior to the responsible entity determining the registered scheme is non-liquid or otherwise determining that withdrawals should be suspended; or (g) to meet expenses in other cases consistent with grounds mentioned in (a) – (f);

		where the member does not otherwise have the financial capacity to meet the expense.
3.	Permanent Incapacity	Where a member has ceased gainful employment by reason of mental or physical ill-health and the responsible entity is satisfied that 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.