



ASIC

Australian Securities & Investments Commission

[CO 02/991]

**Relief from the consideration to acquire
constitutional requirement — amendment**

Issued 17/9/2001

Class Order [CO 02/991] varies Class Order [CO 98/52].

Australian Securities and Investments Commission
Corporations Act 2001 — Subsection 601QA(1) — Variation

Under subsection 601QA(1) of the *Corporations Act 2001* (“Act”), the Australian Securities and Investments Commission (“ASIC”) hereby varies Class Order [98/52] by:

1. in the introductory words of the first paragraph, omitting the words “if the” and substituting the text: “if:
 - (1) the”;
2. adding after subparagraph 601GA(1)(a)(vii) as notionally inserted into the Act by that class order the following text:
 - “(viii) an interest in the scheme may be issued at a price determined by the responsible entity while the scheme is included in the official list of the financial market operated by Australian Stock Exchange Limited and the interests are in a class of interests which is quoted on that financial market and trading in the class is not suspended, under an arrangement where:
 - (A) an offer for the issue of interests is made to each registered holder of interests in that class;
 - (B) each offer is made on the same terms and conditions and on a non-renounceable basis;

- (C) the issue price is less than the market price during a specified period in the 30 days prior to either the date of the offer or the date of the issue; and
- (D) no registered holder may be issued with interests with an application price totalling more than \$5,000 in any consecutive 12 month period,

provided that an offer need not be made to any registered holder whose address is in a place where the responsible entity reasonably considers that it is not lawful or not practical for that entity to offer and issue interests to the person under the arrangement; and

- (2) the following subsection were added after subsection 601GA(1):

(1A) For the purposes of subparagraph (1)(a)(viii):

- (a) **registered holder** means, subject to paragraphs (b) and (c), a person recorded in the register of members of a registered scheme as a member of that scheme;
- (b) if 2 or more persons are recorded in the register of members as jointly holding interests in the scheme they are taken to be a single registered holder;
- (c) if a trustee or nominee is expressly noted on the register of members as holding interests on account of another person (**beneficiary**):
 - (i) the beneficiary is taken to be the registered holder in relation to those interests; and
 - (ii) any issue of interests to the trustee or nominee is taken to be an issue to the beneficiary;
- (d) if the interest must under the terms on which it is traded only be transferred

together with one or more other interests or other financial products (together a *stapled security*), the \$5,000 limit in subparagraph (viii)(D) applies to the stapled security as if its component interests and products constituted a single interest rather than to any of those components separately; and

- (e) a reference to an offer for the issue of interests includes a reference to inviting an application for the issue of the interest.”; and

- 3. deleting the paragraph commencing with the words “And pursuant to” and substituting the following:

“And pursuant to paragraph 601QA(1)(a) of the Act the Commission hereby exempts each responsible entity (except a responsible entity of a time-sharing scheme) from paragraph 601FC(1)(d) of the Act to the extent that it would otherwise prevent the responsible entity from:

- (a) dealing with foreign members in the way described in subparagraphs 601GA(1)(a)(iii), (iv) or (v) as notionally inserted into the Act by this instrument; or
- (b) not making offers under an arrangement as described in subparagraph 601GA(1)(a)(viii), as notionally inserted into the Act by this instrument, to registered holders whose address is in a place where the responsible entity reasonably considers that it is not lawful or not practical to offer and issue interests to the person.”.

Dated this 17th day of September 2002

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