



**ASX Settlement Pty Limited – Exemption Notice 2013**

*Corporations Act 2001*

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I, The Hon Arthur Sinodinos, AO, Assistant Treasurer, make this exemption under section 791C of the *Corporations Act 2001* (the *Act*).

Dated ..... 12/12/13 .....

Assistant Treasurer Arthur Sinodinos

### **Name of exemption**

1. This exemption is the *Corporations (ASX Settlement Pty Limited) Exemption Notice 2013*.

### **Commencement**

2. This exemption commences on the day it is published in the *Gazette*.

### **Exemption**

3. The exempt market operated by ASX Settlement in this jurisdiction is exempt from the operation of Part 7.2 of the Act.

### **Where this exemption applies**

4. This exemption applies where all of the following matters in this paragraph 4 are satisfied.

#### *The mFund Service*

- (a) The managed investment scheme application and settlement service known as 'mFund' is provided by both ASXL and ASX Settlement.

#### *Other licence requirements*

- (b) ASX Settlement is a CS facility licensee.
- (c) ASXL is a market licensee.

#### *Operating rules*

- (d) The operating rules or procedures of ASX Settlement (or ASXL, as appropriate) include provisions requiring:
  - i. a managed investment scheme issuer which uses the mFund (mFund Issuer) service disclose any information that the mFund Issuer is required to disclose or make available to investors generally, or prospective investors, in the managed investment scheme (mFund Product) under the Act or otherwise (including, without limitation, Product Disclosure Statements, Supplementary Product Disclosure Statements, notices issued under section 1017B of the Act, information disclosed on a fund basis in periodic statements issued under section 1017D of the Act and periodic financial or other reports prepared for disclosure to investors in accordance with statutory requirements).
  - ii. that within five business days after a mFund Product is issued by an mFund Issuer through the mFund service, the mFund Issuer must give a written statement to the person to whom the mFund Product was issued (mFund Client) including the following information:

- A. There is a Disclosure Document available for the mFund Product and that the mFund Client should have been given the current version of that Disclosure Document.
  - B. If the mFund Client has not yet received that Disclosure Document, the mFund Client should contact the mFund Issuer to obtain a copy of that Disclosure Document free of charge.
- iii. a mFund Issuer to notify ASX Settlement when it becomes aware of a mFund Client not receiving a Disclosure Document as required by the Act.
  - iv. a participant to provide, electronically or by hard copy, a retail client with the current version of Disclosure Documents required to be given in connection with the issue of a mFund Product to a retail client under the Act; and
  - v. a participant to:
    - A. retain a record, for a period of seven years, of an acknowledgement by a client that the client has been given a current Disclosure Document;
    - B. retain this record in a way that identifies the version of a Disclosure Documents that was given to a client; and
    - C. provide this record to ASXL as requested.

*Disclosure documents*

- (e) ASX Settlement, or a related entity, must maintain a collection of all Disclosure Documents used by mFund Issuers in relation to the mFund settlement service, and ensure this collection remains up-to-date.

**Conditions**

- 5. This exemption ceases to apply if ASX Settlement fails to take reasonable steps to comply with any of the matters set out in this paragraph 5.

*Operation of mFund*

- (a) ASX Settlement, in all material respects, must operate the mFund service in the way set out in the application for exemption.

*Conduct*

- (b) ASX Settlement must do all things necessary to ensure that any financial service provided by ASX Settlement in connection with the operation of mFund is provided efficiently, honestly and fairly.

*Resources*

- (c) ASX Settlement must have available adequate resources (including financial, technological and human resources) to provide the financial services in connection with the operation of the mFund service and to carry out supervisory arrangements.

*Managing conflicts of interest*

- (d) ASX Settlement must have adequate arrangements in place for managing its conflicts of interest arising from providing the mFund service.

*Reporting: disciplinary action against participant*

- (e) If ASX Settlement (or ASXL) takes disciplinary action against a participant or a mFund Issuer under its operating rules and in relation to the mFund service, ASX Settlement (or ASXL as appropriate) must, as soon as practicable, give a written notice to ASIC that includes the following details:
  - (i) the participant or mFund Issuer's name;
  - (ii) the reason for and nature of the action taken, and
  - (iii) when the action was taken.
- (f) Should ASX Settlement (or ASXL) become aware of any systemic failure by a participant to provide retail clients with all Disclosure Documents required to be given in connection with the issue of a mFund Product under the Act, ASX Settlement (or ASXL, as appropriate) will investigate any such failure and, if appropriate, take disciplinary action which may include suspension from participation in the mFund settlement service.

*Reporting: suspected contraventions by participant*

- (g) If ASX Settlement (or ASXL) has reason to suspect that a participant or mFund Issuer has committed, is committing, or is about to commit, a contravention of the Act or a significant contravention of the operating rules of ASXL or ASX Settlement which apply in relation to the mFund service, ASX Settlement (or ASXL as appropriate) must, as soon as practicable, give a written notice to ASIC that includes the following details:
  - (i) the participant or mFund Issuer's name;
  - (ii) details of the contravention or impending contravention, and
  - (iii) ASX Settlement or ASXL's reason for that belief.

### *Record-keeping*

- (h) ASX Settlement must keep adequate records in relation to the mFund service.

### *Annual report*

- (i) ASX Settlement must ensure that the annual report it gives to ASIC under section 821E of the Act includes information about the mFund service in accordance with section 821E of the Act.

### *Reporting: operating status of market*

- (j) ASX Settlement must, within 7 days, notify ASIC in writing if it ceases to operate the mFund service in this jurisdiction.

### *Application of these conditions to ASXL*

- (k) ASX Settlement must take all reasonable steps to ensure ASXL complies with the above conditions insofar as they relate to the services provided by ASXL in respect of mFund, as if they were conditions imposed directly on ASXL.

## **Interpretation**

### 6. In this exemption:

- (a) italicised headings do not form part of this exemption;
- (b) References to 'mFund' are taken to include references to any name by which the mFund service may be known in the future.
- (c) ***application for exemption*** means the application dated 23 May 2013, and resubmitted on 27 September 2013, (including any supplementary correspondence provided by ASX Settlement to ASIC before this exemption is made) for an exemption from the operation of Part 7.2 of the Act of the financial market operated by ASX Settlement.
- (d) ***ASXL*** means ASX Limited (ABN 98 008 624 691), being a related entity of ASX Settlement.
- (e) ***ASIC*** means the Australian Securities and Investments Commission.
- (f) ***ASX Settlement*** means ASX Settlement Pty Limited (ABN 49 008 504 532).
- (g) ***CS facility licensee*** has the meaning given by section 761A of the Act.
- (h) ***Disclosure Document*** means a Product Disclosure Statement and, where applicable, includes a Supplementary Product Disclosure Statement.

- (i) ***exempt market*** means that part of the operations and services provided by ASX Settlement in respect of the mFund settlement service.
- (j) ***market licensee*** has the meaning given by section 761A of the Act.
- (k) ***mFund*** means the application and settlement service for unlisted managed investment schemes that:
  - i. is provided by ASX Settlement pursuant to its clearing and settlement facility licence and pursuant to a financial market exemption granted under section 791C of the Act, and
  - ii. is provided by ASX pursuant to its Australian market licence.
- (l) ***managed investment scheme*** has the meaning given by section 9 of the Act.
- (m) ***operating rules*** has the meaning given by section 761A of the Act.
- (n) ***participant*** has the meaning given by section 761A of the Act.
- (o) ***procedures*** has the meaning given by section 761A of the Act.
- (p) ***Product Disclosure Statement*** has the meaning given by section 761A of the Act.
- (q) ***retail client*** has the meaning given by sections 761G and 761GA of the Act.
- (r) ***Supplementary Product Disclosure Statement*** has the meaning given by section 761A of the Act.
- (s) ***this jurisdiction*** has the meaning given in section 9 of the Act.