

1 September 2016

Mr Greg Medcraft
Chair
Australian Securities and Investment Commission (ASIC)
GPO Box 9827
Sydney NSW 2001

Dear Mr Medcraft

RE: Submission to the ASIC review of the current exemption provided to managed investment schemes (interests not for money), which include grain pools

On behalf of Grain Growers Limited (GrainGrowers), I am pleased to provide this submission to you as part of the ASIC review of the current exemption provided to managed investment schemes (interests not for money), which include grain pools.

GrainGrowers is a national grain grower representative organisation with 17,500 members across all of the major production zones in Australia. Our aim is to build a more efficient, sustainable and profitable grain production sector that benefits all Australia grain growers and the wider grains industry. The Australian grains sector is one of the most important agricultural contributors to the Australian economy, generating an annual production value of \$13.6 billion and \$11 billion in export earnings.

In selling their grain, Australian growers have access to a number of marketing products, including grain pools. Grain pools are generally captured under the definition of a “managed investment scheme” under the *Corporations Act 2001* (the Act). These schemes are subject to a number of compliance requirements under the Act.

For the past decade ASIC has provided exemptions to the operators of some schemes, including grain pools, from a number of regulatory provisions under Class Order 02.212, including:

- the requirement to register the scheme with ASIC (subsection 601ED(5));
- the requirement for a person to hold an Australian financial services licence (subsection 911A(1));
- the prohibition of hawking (unsolicited marketing of managed investment schemes) (section 992A); and
- the obligation to provide a Product Disclosure Statement (Part 7.9).

GrainGrowers understands that some industry participants have raised concerns in recent years about the operation of some grain pools, claiming significant discrepancies between the estimated and final returns. Further, the collapse of a number of grain buying businesses has left growers significantly out of pocket, raising questions about whether further regulation of all grain trading businesses would more adequately balance counter party risk.

In response to industry concerns, the Wheat Industry Advisory Taskforce undertook an inquiry into grain pools as financial products. A key part of this inquiry was examining whether there was a need for greater involvement by the ASIC in the regulation of grain pools. The taskforce found that if ASIC removed the class order and assumed full responsibility for regulatory oversight of pools as managed investment schemes, it would still not be responsible for monitoring the financial



performance of any of the pools involved. Also, the increased compliance costs for pool operators may be significant, and could lead to costs being passed onto growers and a reduction in the number of pools being offered to the market.

Under the Act, Class Order 02.212 will automatically expire in April 2017 and ASIC will need to remake the instrument for grain pools to continue to receive regulatory exemptions, as outlined previously.

ASIC has formed the preliminary view that Class Order 02.212 is operating effectively and efficiently and will continue to form a useful part of legislative framework. ASIC is therefore proposing to continue the provision of exemptions in substantially the same form as the current situation.

GrainGrowers supports ASICs position. Without the exemptions that are currently in place for grain pool operators under Class Order 02.212, significant inefficiencies would be introduced to the grain pool market. Grain pool operators would incur greater costs due to the increased regulatory burden and these costs would drive some smaller pool operators out of the market (thereby reducing competition and choice for growers) and costs would be passed onto growers.

Growers need an open, efficient, and transparent market to promote competition amongst pool providers in the grains industry. Continuation of the exemptions provided under Class Order 02.212 is a necessary component for this competition to exist.

As with any financial investment or grain marketing mechanism, there are benefits and risks associated with using grain pools. Grain pools can be an option for growers to spread risk. However, as past events have shown, there is always a risk that the realised financial return could be less than what was estimated. GrainGrowers encourages growers to consider the various options and risks when making decisions on the sale of their grain.

Best regards



David McKeon
General Manager
Grain Growers Limited

