

8 September 2016

Mai Go
Lawyer, Investment Managers & Superannuation
Australian Securities and Investments Commission
Level 1, 120 Collins Street
Melbourne VIC 3000

Email: mai.go@asic.gov.au

Dear Ms Go

CONSULTATION PAPER 266: remaking ASIC class orders on managed investment schemes: Not for money

Summary

1. Grain Trade Australia (**GTA**) appreciates the opportunity to provide this submission to ASIC in response to the proposal to remake Class Order [CO 02/211] *Managed investment schemes: Interests not for money (Class Order)*, described as CP266.
2. GTA supports in full the remaking of the class order in the form set out by ASIC as the Attachment to CP 266: Draft instrument.
3. GTA strongly holds the view that the grain industry provides robust self-regulation in respect of grain pools and this self-regulation operates efficiently and effectively.
4. Further, GTA holds the view that the removal of the Class Order exemption would result in higher costs to pool providers and grower participants and would not improve the financial return to grain grower pool participants.

Introduction

5. GTA was formed in 1991 to develop grain trading standards; Trade Rules and grain contracts across the Australian grain industry to facilitate trade across the grain supply chain. GTA is non-political and is industry driven and managed.
6. Over 270 organisations form the membership group of GTA, ranging from regional family businesses to large national and international trading and storage and handling companies. Some members may make individual submissions to ASIC. The current membership list is annexed to this submission (Annexure A).

Background

7. The current Class Order effects the commercial grains industry through the application of the exemption to grain pools. Grain pools are similar to managed funds and property trusts. They allow grain growers¹ to combine (or pool) their grain with other growers' grain to form larger exportable parcels suitable for international markets and/or as a way to market their grain without having to make individual selling decisions. They are one marketing option available to Australian growers to sell their grain.² A number of companies in Australia offer grain pools and the offering varies widely from large corporates to smaller boutique traders.

¹ Pools are not exclusively used by Growers and other Trade participants may choose to contribute grain to a pool.

² Cash sales are another option.

8. Grain pools operate by having growers commit a certain tonnage of grain to a pool to be marketed by the relevant pool provider over a period of time.
9. The grower will expect that the pool provider will use their skill, market access and access to finance to provide a favourable dollar per tonne return to the grower. Pool providers will not guarantee a return but will undertake to use their best endeavours to maximise the return available in the prevailing market.
10. Pool providers will also be expected to manage price-risk caused by world grain price and currency market fluctuations.
11. The grower will be entitled to payment by way of a share in the net return once the pooled grain has been sold, the proceeds of sale received by the pool provider (gross return) and any fees and expenses incurred in marketing the grain deducted by the pool provider.
12. Grain pools are generally considered to be managed investment schemes however they do not have a predominant investment character; pool providers rely on the Class Order exemption to provide Australian grain growers with a competitive option to sell their grain.
13. Pool terms and conditions will vary from pool to pool. The degree of price risk management will vary. Some pool providers will offer growers cash advances by borrowing against the pooled grain.

Concerns with Grain Pools

14. While grain pools are a long established marketing option for grain growers, concerns are raised from time to time about;
 - (a) Transparency in relation to fees and charges deducted by pool providers;
 - (b) Promotion of unrealistic Estimated Pool Returns (**EPRs**) to attract grain into pools.

GTA Code of Conduct

15. To address some of these concerns, GTA published the Australian Grain Industry Code of Practice Technical Guideline Document No.4 – Operating Standards for Grain Pool Providers in July 2013 (**Code of Practice**). A copy of the Code of Practice is annexed to this submission (**Annexure B**).
16. Compliance with the Code of Practice is mandatory for each member of GTA when offering grain commodity pools to their clients.
17. The Code of Practice sets out duties and operative provisions that pool providers must adhere to.
18. These provisions include:
 - (a) duties to act with honesty, integrity and to exercise reasonable care and diligence;
 - (b) the duty to not make use of information acquired through operating a grain pool to gain an improper advantage;
 - (c) the requirement to publish grain pool terms and conditions, that specifically outline the fees, costs, term and the risk mitigation tools used by the pool provider (such as hedging or derivative products);
 - (d) the requirement to disclose any related party transactions that may be conducted by the pool provider and to disclose that if any such transaction occurs, that it is reasonable in the circumstances and conducted at arm's length to the grain pool;

- (e) if an estimated pool return (end price payable to the grower for their allocated grain) (**EPR**) is published by the pool provider, it must explain all relevant fees and costs and be updated at least monthly (or earlier if there is a material adverse change to the EPR);
 - (f) the requirement to publish at least quarterly a report on the performance and operation of the grain pool;
 - (g) the requirement to maintain adequate records of the grain pool's operation and maintain accounting records separate to any other business of the pool provider; and
 - (h) no later than six months after the final payment to grain growers under the grain pool, engage an independent auditor to audit:
 - (i) the accounting records of the grain pool;
 - (ii) the pool providers compliance with its duties under the GTA Code of Conduct; and
 - (iii) the compliance of the pool provider with the terms and conditions of the pool.
19. The Code of Practice additionally contains a Complaints Procedure by which anyone aggrieved may bring a complaint to GTA. If a complaint is upheld GTA has the power to suspend or cancel the pool provider's membership.
20. Assuming the pool terms incorporate the GTA Trade Rules, any breaches of contract by the pool provider may be subject to arbitration including an award of damages.

Wheat Industry Advisory Taskforce

21. The Wheat Industry Advisory Taskforce (**WIAT**) was established under the *Wheat Export Marketing Amendment Act 2013*. The terms of reference of WIAT included an investigation into grain pools as financial products.
22. WIAT formed the view in their submitted report to the Minister of Agriculture on 18 December 2013 (**WIAT Report**) (attached to this submission as Annexure C) that the removal of the Class Order exemption would not guarantee improved financial returns to grain growers.
23. Further, the WIAT Report concluded that depending on individual circumstances, the removal of the Class Order exemption may result in higher costs for grain pool operators and participants. The WIAT review received submissions from grain pool operators that the estimated compliance cost on a grain pool, depending on size and complexity of the pool, would be in the range of \$200,000 to \$500,000.
24. WIAT specifically noted in its findings that it was supportive of the grain industry's efforts to increase the level of information disclosure to grain grower pool participants via the GTA Code of Practice.

Conclusion

25. The GTA membership comprises the majority of key industry participants in grain pools, from grower advisory members to boutique and large corporate pool providers.
26. The robust level of compliance required by GTA members via the GTA Code of Practice has demonstrated the commitment of the industry to self-regulate the operation of grain pools and ensure compliance with good financial practice methods.
27. The exemption provided under the Class Order is working efficiently to exempt the industry from onerous compliance costs that may reduce the number of grain pool products offered to growers. Therefore the exemption is supporting a competitive market place for grower's grain.

28. The issue was thoroughly canvassed by WIAT as recently as 2013 and there have been no significant changes in the grains market since that report was produced.
29. The effectiveness of the Class Order is evident by the strong support of the industry to impose industry regulation (as demonstrated by the GTA Code of Practice) while allowing robust competitiveness amongst pool provider products.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P O Shannassy', with a stylized, flowing script.

Mr Pat O'Shannassy
Chief Executive Officer

Membership List as at 31 August 2016

Organisation	Contact	Website /Phone
Ordinary Member (Trading)		
Level A1 (over 7 Million Tonnes)		
Co-operative Bulk Handling Limited	Mr Jason Craig	cbh.com.au
Glencore Grain Pty Ltd	Mr Phillip Hughes	glencoregrain.com.au
		2
Level A2 (5 - 7 Million Tonnes)		
		0
Level A3 (3 - 5 Million Tonnes)		
ADM Trading Australia Pty Ltd	Mr Tim Henry	adm.com
Cargill Australia Limited	Ms Penne Kehl	cargill.com.au
Graincorp Operations Ltd	Mr Klaus Pamminger	graincorp.com.au
		3
Level A4 (1.5 - 3 Million Tonnes)		
Emerald Grain Pty Limited	Mr David Johnson	emeraldgrain.com
Nidera Australia Pty Ltd	Mr David Lengren	nidera.com.au
		2
Level B1 (1.0 - 1.5 Million Tonnes)		
Bunge Agribusiness Australia Pty Ltd	Mr Chris Aucote	bunge.com/Agribusiness
Louis Dreyfus Company Australia Pty Ltd	Mr Robert Green	louisdreyfus.com.au
		2
Level B2 (500,000 - 1 Million Tonnes)		
Agrex Australia Pty Ltd	Mr Richard Glasson	agrexaustralia.com.au
Broadbent CHS Pty Ltd	Mr Justin Fay	broadbentgrain.com.au
Cofco Agri Australia Pty Ltd	Mr Josh Taylor	au.cofcoagrigrain.com
George Weston Foods Limited	Mr Mark O'Brien	gwf.com.au
Inghams Enterprises Pty Limited	Mr Graeme Dillon	ingham.com.au
Plum Grove Pty Ltd	Mr Tony Smith	plumgrove.com.au
Ridley Agriproducts Pty Ltd	Mr Michael Reeves	agriproducts.com.au
Riverina (Australia) Pty Ltd	Mr Jon Mulally	riverina.com.au
		8
Level B3 (250,000 - 500,000 Tonnes)		
Agracom Pty Ltd	Mr Joe Hallman	agracom.com.au
AGRIGRAIN	Mr Jeremy Brown	agrigrain.com
Arrow Commodities Pty Ltd	Mr Dominic Vanzella	arrowcom.com.au
Australian Grain Export Pty Ltd	Mr John Thiele	08 8832 2800
Centre State Exports Pty Ltd	Mr Jeff Voigt	centrestateexports.com.au
Chinatex Australia Pty Ltd	Mr Jiling Lai	02 9957 2688
Lempriere Grain Pty Ltd	Mr Jonathan Holdsworth	lemprieregrain.com.au
Riordan Grain Services	Mr Bradley Hogan	riordangrains.com.au
Robinson Grain Trading Co Pty Ltd	Mr Gary Robinson	robinsongrain.com.au
Special One Grain Accumulator	Ms Jaimee Carrigan	specialonegrain.com.au
United World Enterprises Pty Ltd	Mr Jimmy Liu	uwetypical.com
Wilmar Gaviion Pty Ltd	Mr Matt Albion	07 3713 8700

Ordinary Member (Trading) (contd)

Level C (under 250,000 Tonnes)

A & B Grains Pty Ltd	Mr Chris Wolski	abgrains.com.au
A T Waterfield & Son Pty Ltd	Mr Brad Waterfield	03 5382 3725
A W Vater and Co	Mr Kim Vater	vater.com.au
Adams Australia Pty Ltd	Mr Ian Mack	adamsaustralia.com.au
Agmark Commodities	Mr Richard Alcorn	agmark.com.au
Agri Om Australia Pty Ltd	Mr Kishore Bulchandani	agriom.com.au
Agri-Oz Exports Pty Ltd	Mr Francois Darcas	03 9830 7021
Agriex Australia Pty Ltd	Mr Joseph Khnessier	02 9232 0690
Agrifoods Australia	Mr Rob Anderson	agrifoodsaustralia.com.au
Agromin Australia Pty Limited	Mr Rajni Patel	agromin.com.au
AGT Foods Australia	Mr Peter Wilson	agtfoods.com/australia
All Commodities Pty Ltd	Mr Nathan Holmes	allcommodities.com.au
Allied Mills	Mr Simon Gelling	alliedmills.com.au
AMPS Agribusiness Group	Mr David Caldwell	ampsagribusiness.com.au
Associated Grain	Mr Todd Jorgensen	07 4662 1999
Auscott Ltd	Mr Peter Webb	auscott.com.au
AusiCan Commodities	Mr Palwinder Singh	ausican.com
Ausrealt International Pty Ltd	Mr Robin Luo	ausrealt.com.au
Australian Choice Exports Pty Ltd	Mr James Hunt	australianchoiceexports.com.au
Australian Grain Growers Co-operative Limited	Mr Bruce McDonald	aggcoop.com.au
Australian Grain Storage	Mr Matt Bailey	sunrice.com.au
Australian Growers Direct Pty Ltd	Mr Jamie Smith	ausgrowersdirect.com.au
Avigrain Produce	Mr Dennis Ward	avigrain.com.au
Baker Grain	Mr Richard Baker	bakergrain.com.au
Berriwillock Grain Storage Co-Operative Ltd	Mr Tony Bellinger	moulameingrain.com
BFB Pty Ltd	Mr Terry Brabin	bfb.com.au
Big River Feeds Pty Ltd	Mr Bjorn Ludvigsen	08 8532 4434
Blairs Produce Company	Mr Sean Blair	02 6025 4600
Blue Ribbon Seed and Pulse Exporters	Mr Stephen Donnelly	07 3363 8400
Boort Grain Co-Operative	Mr Tony Bellinger	03 5455 2600
Broun and Co Grain Pty Ltd	Mr Wal Broun	brounandco.com.au
Bungulla Farming Pty Ltd	Mr Brad Jones	08 9637 1164
C & S Trading Pty Ltd	Mr Craig Scholz	scholzbh.com.au
C K Tremlett Pty Ltd	Mr Andrew Tremlett	08 8524 9050
Cameron Pastoral Company Pty Ltd	Mr Ross Stephens	07 4671 4144
Castlegate James Australasia Pty Ltd	Mr Dominic Hogan	castlegatejames.com.au
Cleveland Agriculture	Mr Chris Hurwood	02 6756 5004
Commex International Pty Ltd	Ms Mariam Boulos	02 9531 7341
Coorow Seeds	Mr Brian Pover	coorowseeds.com.au
COPRICE	Ms Kirsty Cutter	coprice.com.au
Cremer Australia Pty Ltd	Mr Brendan Macauley	cremer.de
DA Hall and Co	Mr Bruce Holden	07 4695 5777
Dalby Bio-Refining Limited		dbri.com.au
Dalgrains (Qld) Pty Ltd	Mr Tobin Cherry	dalgrains.com
Darwalla Milling Co Pty Ltd	Mr Gary Heidenreich	07 3822 0527
Deacon Seeds Company	Mr Terry Deacon	07 4662 3217
Deckert Group Pty Ltd	Mr Chris Deckert	deckerts.com.au
Defiance Maize Products Pty Ltd	Mr Rodney Walker	corson.co.nz
Demeter Cormack Pty Ltd	Mr David Oates	08 6389 0098
Donnellons Bulk Haulage Pty Ltd	Mr Bill Donnellon	0428 136 483
ED & F Man Grains Australia	Mr Jon Bucknall	edfman.com
East Coast Stockfeed Pty Ltd	Mr Stuart Dolden	ecsf.com.au
Elders Grain	Mr Matthew Tolmachoff	elders.com.au
Export Trading Group Australia Pty Ltd	Mr Shayne Clark	etgworld.com
Feed Central Pty Ltd	Mr Tim Ford	feedcentral.com.au

Level C (under 250,000 Tonnes) cont.

Fellows Nominees	Mr Paul Fellows	fellowsbulk.com.au
FertInvest Pty Ltd	Mr Preyesh Barar	fertinvest.com
Findlays Barellan	Mr Neil Findlay	02 6963 9246
Fletcher International Exports Pty Ltd	Mr Kurt Wilkinson	fletchint.com.au
FREE Eyre Grain Pty Ltd	Mr Mark Rodda	free-eyre.com.au
Golden Harvest Grain Exports	Mr Chandru Hiremath	goldenharvest.net.au
Grain Direct Australia	Mr Lyndon Benecke	graindirect.com.au
Grain Link (NSW) Pty Ltd	Mr Paul Pearsall	02 6962 9500
Grain Link WA Pty Ltd	Mr Andrew Goyder	grainlink.com.au
Grainforce Pty Ltd	Mr Derek Larnach	02 6331 4880
Grainpro Pty Limited	Ms Angela Bonfante	grainpro.com.au
GrainTrend Pty Ltd	Mr Sanjiv Dubey	graintrend.com
Greentree Farming	Mr David Brown	02 6751 1228
GV Grain & Fodder	Ms Joanne Harry	03 5828 3063
Hanlon Enterprises Grain	Mr Peter Gerhardy	02 6924 1781
Hassad Australia Operations Company Pty Ltd	Mr James Carson	02 8019 7150
Iloura Resources Pty Ltd	Mr Hans Hol	iloura-resources.com
Independent Grain Handlers Pty Ltd	Mr Brad Bryant	igh.net.au
Irwin Stockfeeds	Mr Bryan Irwin	irwinstockfeeds.com.au
Itochu Australia Ltd	Mr Justin Swan	www.itochu.com.au
J K International Pty Ltd	Mr Sandeep Mohan	jki.com.au
J W Koek & Company	Mr Brian Algate	07 3341 4548
James Stock Feed and Fertilizer Pty Ltd	Mr Adrian Moule	jamesstockfeed.com.au
Jerilderie Grain Storage & Handling	Mr David Barlow	03 5886 0344
KB Agri Services Pty Ltd	Mr Karl Bliss	07 4634 4320
K M & W M Kelly & Sons	Mr Chris Kelly	kellygrains.com.au
Kangaroo Island Pure Grain Pty Ltd	Ms Emma Tonkin	kipuregrain.com
Kennett Rural Services Pty Ltd	Mr Andrew Kennett	kennettrural.com.au
Lachlan Commodities Pty Ltd	Mr Tony Cogswell	02 6851 2077
Laharum Bulk Handling Co	Mr Donald Carter	03 5381 2666
Lake Grain Pty Ltd	Mr Derek Davis	lakegrain.com.au
Lane Grain Pty Ltd	Mr Garry Lane	02 6887 3309
Laragon Almond Processors Pty Ltd	Mr Mark Webber	laragon.com.au
Laucke Flour Mills P/L	Mr Roger Laubsch	laucke.com.au
Lawson Grains Pty Ltd	Mr Angus Blair	lawsongrains.com
LDC Enterprises Australia Pty Ltd	Mr Richard Porter	07 3253 5999
LPC Trading Pty Ltd	Mr Simon Langfield	02 6383 7222
Malteurop Australia Pty Ltd	Mr Jack King	03 5277 1950
Matthews Transport and Grain Traders	Mr Neville Matthews	08 9831 1021
Max Grains Pty Ltd	Mr Jack Fahy	maxgrains.com.au
MC Croker Pty Limited	Mr Greg Carroll	crokergrain.com.au
McNaughts Grain & Fertilizer Pty Ltd	Mr Daniel McNaught	mcnaughts.com
Melaluka Trading Pty Ltd	Mr Simon Pritchard	melalukatrading.com.au
Mellco Pty Ltd	Mr Steve Mellington	0419 867 971
Moulamein Grain Co-Operative Ltd	Mr Tony Bellinger	moulameingrain.com
Mountain Industries Pty Ltd	Mr Bill Law	mountainindustries.com.au
Moxey Farms Pty Limited	Mr Peter Philipzen	0407 103 158
MSM Milling Pty Ltd	Mr Peter MacSmith	02 6364 5999
Murrumbidgee Grains Pty Ltd	Mr Peter Hassall	02 6937 9100
Namoi Cotton Co-Operative	Mr Shane McGregor	namoicotton.com.au
Nandaly Grain Co-Operative Ltd	Mr Tony Bellinger	03 5078 1217
Network Grains Pty Ltd	Mr Craig Dennis	07 4637 8500
Newcastle Agri Terminal Pty Ltd	Mr Jock Carter	02 4962 4006
Northern Riverina Grains Pty Ltd	Mr Tony Bellinger	03 5032 2553
OOMA Enterprises NSW Pty Limited	Mr Malcolm Berry	oomaenterprises.com.au
Origin Grain Pty Ltd	Mr Peter Brick	03 5720 8500

Level C (under 250,000 Tonnes) cont.

Pallinup Logistics Pty Ltd	Kevin Imberti	0429 508 302
PB Seeds Pty Ltd	Mr Peter Blair	pbseeds.com.au
PeaCo	Mr Shane Wall	03 5497 1766
Pearson's Grain Pty Ltd	Mr Darren Pearson	pearsonsgroup.com.au
Peters Commodities Pty Ltd	Mr Michael Oxley	petcom.com.au
Phoenix Global Australia Pty Ltd	Mr Jogesh Virk	phoenixcommodities.com.au
Premium Grain Handlers P/L	Mr John Orr	pgh.com.au
Preston Grain	Mr Andrew Kell	02 6977 1733
Pulse Association of the South East (PASE) Inc	Ms Leanne Burr	08 9071 3655
Quadra Commodities Pty Ltd		quadra.com
Quirindi Grain & Produce	Mr John Webster	02 6746 1911
Regal Seed & Grain P/L	Mr Damien White	regalseed.com.au
Reid Stockfeeds Pty Ltd	Mr Ian Reid	reidstockfeeds.com.au
Rivalea (Australia) Pty Ltd - Animal Nutrition	Mr Andrew Philpotts	rivalea.com.au
Riverina Oils & BioEnergy Pty Ltd	Mr Lachlan Herbert	riverinaoils.com
Roty Grain Store	Mr Brian Newman	02 6988 8221
Ruddenklau Grain Pty Ltd	Mr Tim Ruddenklau	08 8842 1314
Rural Logic (Aust) Pty Ltd	Mr Michael Wood	rurallogic.com.au
SANWA Pty Ltd	Mr Charles Emerson	sanwa.com.au
Seedhouse Tasmania	Mr Matthew Crane	seedhouse.com.au
Shannon Bros Bulk Haulage	Mr Clayton Shannon	03 5390 2264
Silo Bag Grain (NSW QLD) Pty Ltd	Ms Lesley Kilby	02 6847 1788
Societa Cofica Pty Ltd	Mr Dia Ram Sharma	societacofica.com.au
Southern Ark Storage Pty Ltd	Mr Simon Pritchard	arkstorage.com.au
Southern Cotton Trading Pty Ltd	Mr Chris Veness	02 69 552 779
Southern Cross Agricultural Exports P/L	Mr Matthew Barnes	0427 876 643
Southern Grain Storage Pty Ltd	Mr Campbell Brumby	03 5267 2351
Southern Stockfeeds (Operations) Pty Ltd	Mr David Jemmet	03 5437 8295
Spagrimon Australia Pty Limited	Mr Jiger Kotecha	spagrimon.com.au
Standard Commodities Australia Pty Ltd	Mr Michael Betar	stancom.com.au
Sumitomo Australia Pty Ltd	Mr Tsuyoshi Osumi	sumitomocorp.com.au
Summer Hill Grains	Mr Barney Hughes	0428 694 363
Tasmanian Agricultural Producers Pty Ltd	Mr David Skipper	tasagproducers.com.au
TSS Grain	Mr Trevor Macleod	tasstockfeed.com.au
Thallon Grains Pty Ltd	Mr Andrew Earle	02 6756 5004
Twynam Pastoral Company	Ms Lesley Heidtman	twynam.com
Unigrain Pty Ltd	Mr Ervin Leong	unigrain.com.au
Unique Grain Management Pty Ltd	Mr Mark Thiele	uniquegrain.com.au
W B Hunter Pty Ltd	Mr Stewart Coombes	03 5821 5744
Ward McKenzie Pty Ltd	Mr Mal Parkhill	mckenziefoods.com.au
WHG Oceania Pty Ltd	Gesheng Shen	02 8040 3030
Whitty Produce	Ms Marsha McMonigle	03 5721 6588
Whyalla Beef Pty Ltd	Mr Gino De Stefani	whyallabeef.com.au
Wilken Grain	Mr Richard Wilken	wilken.com.au
Wimpak Pty Ltd	Ms Jo Cameron	wimpak.com.au
XLD Grain Pty Ltd	Mr Lachie Stevens	xldgrain.com.au
Yenda Prods Grain Pty Ltd	Mr Luke Mancini	0437 512 322

159**Transport Operator**

Gehrke Grains and Transport Pty Ltd	Mr Julian Gehrke	07 5465 6695
Wakefield Grain Export Services	Mr John Gray	wakefields.com.au

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Broker

Large

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Medium

Fox Commodities	Mr Paul Cochrane	foxcommodities.com.au
Grain Brokers Australia	Mr Jeff Winspear	grainbrokers.com.au
Horizon Grain Brokers Pty Ltd	Mr Ash Munro	horizongb.com.au
Igrain.com.au Pty Ltd	Mr Tom Roberts	igrain.com.au
INTL FCStone Pty Ltd	Mr Brett Cooper	intlfcstone.com
McDonald Pelz Australia	Mr Peter Geary	mcdonaldpelz.com
Perkins Commodity Brokers	Mr Craig Perkins	03 9645 6846
Teague Australia Pty Ltd	Mr Tim Teague	teague.com.au

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Sole Operator

A C Grain	Mr Adam Clarke	0400 065 763
ACCB Australia	Mr Andy Cunliffe	0455 105 300
AgLink - CMS	Mr Justen Schofield	aglinkcms.com.au
Allied Grain Pty Ltd	Mr Angus Wettenhall	alliedgrain.com.au
Cereal Milling Services Pty Ltd	Mr Michael Moss	02 4323 9339
Cogeser (Australia) Pty Ltd	Mr Robert Luetolf	cogeser.com.au
Farm Tender	Mr Matt Henke	farmtender.com.au
Knight Commodities	Mr Chris Groat	07 4671 5221
Mallon Commodity Brokering	Mr Ian Mallon	mcbrokering.com
Quest Commodities Pty Ltd	Ms Jayne Barker	questcommodities.com.au
Shearwater International Pty Ltd	Mr Don Cattanaach	07 3324 9088
Wimmera Mallee Grain Services	Mr Rodney Edgerton	egrainservices.com.au

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Corporate

Large

ASX Limited	Mr Kristen Hopkins	asx.com.au/grainfutures
Australia And New Zealand Banking Group	Mr Ian Hanrahan	anz.com.au
Australian Grain Technologies Pty Ltd	Mr Haydn Kuchel	agtbreeding.com.au
Commonwealth Bank of Australia	Mr Tom Barraket	commbank.com.au
Symbio Laboratories	Ms Elizabeth Owens	symbiolabs.com.au

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Medium

Agfarm Pty Ltd	Mr Ron McCalman	agfarm.com.au
Agrifood Technology Pty Ltd	Ms Doreen Fernandez	03 9742 0589
Agrisk Management Pty Ltd	Mr Brett Stevenson	02 9499 4199
Australian Superintendence Company	Mr Andrew Parry	07 3391 8640
Commodity Inspection Services (Australia) Pty Ltd	Mr Mathew Conoulty	commodityinspection.com.au
Foss Pacific Pty Ltd	Mr Simon Kirkman	foss.com.au
Holding Redlich	Mr Geoff Farnsworth	holdingredlich.com
Holman Fenwick Willan	Mr Stephen Thompson	hfw.com
Intertek	Mr Lee Shilvock	intertek.com
Merricks Capital Pty Limited	Mr Adam Davis	merrickscapital.com
NZX Australia (CGX, ACF, PFA)	Mr Nathan Cattle	nxz.com
SBA Law	Mr Jeremy Rosenthal	sbalaw.com
SGS Australia Pty Ltd	Mr Scot Paterson	au.sgs.com

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Small

Advance Trading Australasia	Mr Andrew Woodhouse	advance-trading.com.au
Ag Scientia Pty Ltd	Mr Lloyd George	03 9598 1980
AvantAgri Australia Pty Ltd	Mr Peter Woods	avantagri.com.au

Corporate - Small (cont)

CloudBreak Grain Marketing Pty Ltd	Mr Ed Scamps	08 8388 8084
Basis Commodities Pty Ltd	Mr Chris Whitwell	basiscommodities.com.au
Delta Agribusiness Pty Ltd	Mr Michael Parry	02 6772 0000
Direct Commodities Pty Ltd	Mr Hamish Robertson	directcommodities.com.au
EP Integrated Commodities Pty Ltd	Ms Tracey Lehmann	08 8627 2304
Farmanco Marketing Pty Ltd	Mr Donald McTaggart	farmanco.com.au
FarMarCo Australia Pty Ltd	Mr Robert Imray	07 4637 6400
Finesse Solutions Pty Limited	Mr Malcolm Finlayson	02 9872 9270
Flexi Grain	Mr Jarrod Tonkin	flexigrain.com.au
Goldstar Commodities	Mr Geoff Webb	goldstarcommodities.com.au
Grainx	Mr Chris Hood	grainx.com.au
HarvestCheck Pty Ltd	Mr Stephen Schumacher	0418 199535
Hay Plains Grain Storage Pty Ltd	Mr Ron Harris	0404 444 600
IKON Commodities Pty Ltd	Mr Simon Clancy	ikoncommodities.com.au
JBS Australia	Mr Richard Nicholls	jbssa.com.au
MarketAg Pty Ltd	Mr Mark Martin	02 6747 1590
McMullen Consulting Pty Ltd	Mr Gerard McMullen	03 8300 0108
Mirfak P/L	Mr Mark Murphy	mirfak.com.au
Murray Goulburn Trading Pty Ltd	Mr Gerard Murphy	03 5862 2799
OMIC Australia Pty Ltd	Mr Yasuhide Okumura	omicaustralia.com.au
Perten Instruments Australia Pty Ltd	Mr Raul Ovelar	02 9870 3400
Peter McQueen Pty Limited	Mr Peter McQueen	petermcqueen.com
Pinnacle Commodities Pty Ltd	Mr Rod Buckle	pinnaclecommodities.com.au
Planfarm Marketing Pty Ltd	Mr Jerome Critch	planfarm.com.au
Primal Foods Group	Mr Peter Longhurst	02 8011 4182
Rural Directions Pty Ltd	Mr Chris Heinjus	ruraldirections.com
SGA Solutions Pty Ltd	Mr David Hudson	03 5428 4990
TE Storage & Logistics Pty Ltd	Mr Tom Hage	08 8762 2188
Ten Tigers	Mr Chris Tonkin	tentigers.com.au

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International Affiliate

CIS - Commodity Inspection Services	Mr Paul Schweitzer	cis-inspections.com
CCIC Australia Pty Ltd	Mr Isherwood Feng	02 9580 3212

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Industry Association

Grain Growers Limited	D. McKeon/M. Southan	graingrowers.com.au
Grain Industry Association of WA	Ms Larissa Taylor	giwa.org.au
Grain Producers Australia Ltd	Mr Andrew Weidemann	grainproducers.com.au
NSW Farmers Association	Mr Justin Crosby	02 8251 1827
Victorian Farmers Federation	Mr Stephen Sheridan	03 9207 5555

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Merchant Association

Grain Industry Association of SA	Mr Tim Mee	08 8395 3572
Grain Industry Association Of Victoria	Mr Colin Peace	giav.com.au
Grain NSW Inc	Ms Joanne Ware	grainnsw.com.au
Queensland Agricultural Merchants Inc.	Mr John Francis	qam.org.au

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Life Members

Mr Mervyn May	Retired	Awarded
Mr Christopher Kelly	K M & W M Kelly & Sons	Awarded July 2015
Mr Geoff Honey (<i>Posthumously awarded</i>)	Former GTA CEO	Awarded July 2016

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Australian Grain Industry – Code of Practice Technical Guideline Document

No. 4 OPERATING STANDARDS FOR POOL PROVIDERS

**Compiled on behalf of the Australian Grain Industry by:
Grain Trade Australia**

Version 1
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Australian Grain Industry – Code of Practice

<http://www.graintrade.org.au/node/670>

Technical Guideline Document

No. 4 Operating Standards for Pool Providers

Version Control

Date	Version	Amendments
July 2013	1.0	Original document development

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1. Preamble

1.1 Pool Providers

GTA requires that its members adhere to this standard when offering grain commodity pools to their clients. GTA encourages all potential clients of any GTA members' pools to conduct an initial assessment of the capabilities of the Pool Provider. Before committing to enter into a contract as a Pool Participant, a potential customer should satisfy themselves that a Pool Provider has in place:

- the appropriate skills,
- payment systems,
- risk systems and procedures,
- governance and compliance protocols,
- policies and resources

to manage the Pools that they offer and that they are regularly reviewed to evaluate the currency of their application. Potential Pool Participants should seek information relating to each of the above components before entering into a contract.

1.2 Potential Pool Participants

Potential Pool Participants should also be fully aware of the terms of the contract and understand the aims of the Pool Provider for each pool product on offer. Ensuring that a Pool Provider's marketing and pricing strategy for a particular Pool and the associated policies accord with the expectations of a potential Pool Participant is an important assessment that should occur before a contract is entered into.

2. Duties of a Pool Provider

When operating a Pool, a Pool Provider must:

- act with honesty and integrity;
- exercise reasonable care and diligence;
- act in the best interests of the Pool Participants and, if there is a conflict between the Pool Participants' interests and the Pool Provider's interests, give priority to the Pool Participants' interest;
- ensure that any costs or fees resulting in the Pool Provider receiving a financial benefit from the Pool are disclosed;
- not make use of information acquired through being the Pool Provider to gain an improper advantage for itself or another person or cause detriment to the Pool Participants;
- ensure the clear identification of grain belonging to a Pool and the separation of Pool assets and liabilities from other Pools and that of the Pool Provider; and
- ensure that any related party dealing resulting in the Pool Provider receiving a financial benefit from the Pool is reasonable in the circumstances and at arm's length.

3. Terms and conditions of a Pool

A Pool Provider will publish and make available to all prospective Pool Participants terms and conditions of the Pool which address matters including (but not limited to):

- the risk to Pool Participants of delivering grain into a Pool;
- the strategy and management plan to be adopted by the Pool Provider of the Pool;
- whether related party transactions may be conducted by the Pool Provider and an acknowledgement that if there are any related party transactions, they are reasonable in the circumstances and at arm's length;
- the risk mitigation tools used by the Pool Provider (such as hedging or derivative products);

- the costs/fees (including management, service and administration fees) chargeable by the Pool Provider and how they are calculated;
- the expected term of the Pool;
- the regions or locations where the Pool will operate;
- how estimated and final returns of the Pool are calculated (both on an aggregated Pool and individual Pool Participant level) and notified to Pool Participants;
- the freight rates or GTA Location Differentials used to determine EPRs to a 'delivered receival site' basis;
- pool payments such as early contracting bonuses and quality payments made to select Pool Participants and the impact such payments may have on other Pool Participants' returns; and
- the timing and methods of payment available under the Pool and the costs or interest associated with each different payment method.

4. Estimated Pool Return

- Where a Pool Provider posts an Estimated Pool Return (or similar terminology) for a Pool, that EPR will be a fair and reasoned estimate that the Pool Provider will be able to justify to Pool Participants at the time it is posted.
- The EPR must explicitly define what costs, fees and charges are included and excluded in the published figure.
- The EPR will be regularly updated via a posting on the Pool Providers website at least monthly. Where there is a Material Adverse Change to the EPR, the Pool Provider will update the EPR as soon as practicable.
- The EPR will be published for each grade, payment method and port terminal on a Net EPR basis.

5. Reporting and Audit of Pool

- During the term of the Pool, the Pool Provider will publish and deliver to Pool Participants, at least quarterly, reports concerning the performance and operation of the Pool. Where there is a Material Adverse Change to the EPR of a Pool, the Pool Provider will report on the reasons for the change.
- The Pool Provider will ensure adequate records of the Pool's operations are kept and prepare separate accounting records for each Pool adhering to requirements of an accredited external auditor. In relation to related party transactions, the Pool Provider will maintain accounting records detailing the value and time of such transactions.
- Before or following closure of a Pool, and no later than six months of the final payment of a Pool, the Pool Provider will:
 - engage an independent auditor to audit:
 - the accounting records of the Pool;
 - the Pool Provider's compliance with its duties under this Code (to the extent it is practically possible);
 - the Pool Provider's compliance with the terms and conditions of the Pool; and
 - publish and deliver the findings of the auditor to Pool Participants.

6. Definitions

6.1 Estimated Pool Return or EPR

Is the financial return that Pool Participants can expect net of all Pool Provider charges at a designated price basing point, i.e. country silo, port or free on board.

6.2 Net EPR

The value of the EPR once costs for fobbing, associated export shipping charges (including shipping slot costs), financing and other pool costs have been deducted.

6.3 Material Adverse Change

In relation to an EPR means a reduction of the original published EPR of more than 5%.

6.4 Pool

Refers to a grouping of grain treated by a Pool Provider as a Pool for the purposes of buying grain, grouped according to time of delivery, location, quality, grade or variety of grain or such other matters as determined by the Pool Provider. Sales are made from the grain Pool and profits (losses) are shared between the Pool Participants.

6.5 Pool Provider

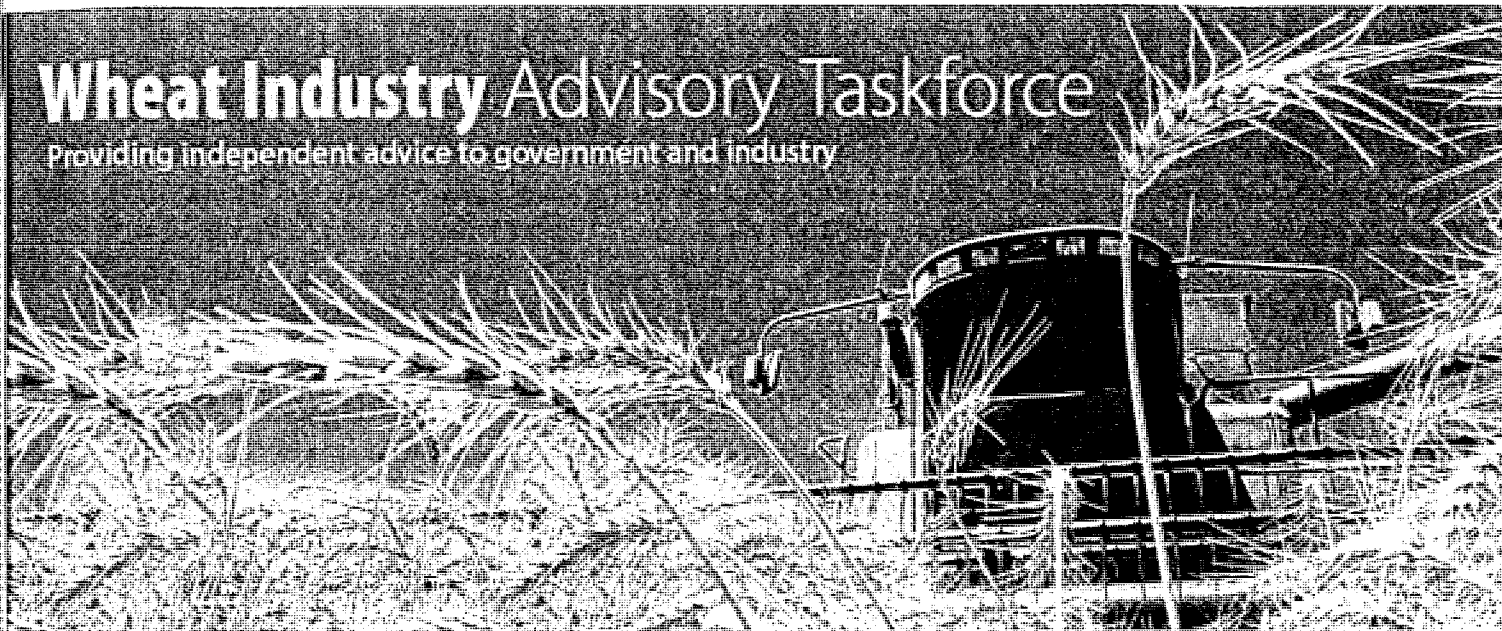
Means a commercial organisation that derives a financial advantage from conducting a Pool for the benefit of Pool Participants.

6.6 Pool Participant(s)

Is a person or organisation that provides grain

Wheat Industry Advisory Taskforce

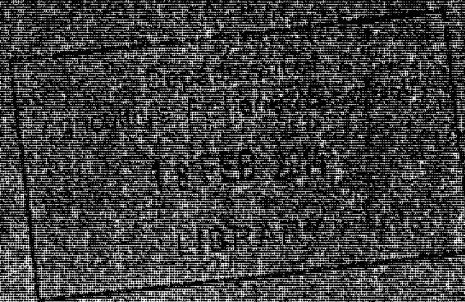
Providing independent advice to government and industry



Grain pools as financial products

Final report

18 December 2013



Grain pools as financial products

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18 December 2013

The Hon. Barnaby Joyce MP
Minister for Agriculture
minister@maff.gov.au

Dear Minister

As you know, the Wheat Industry Advisory Taskforce was established under the *Wheat Export Marketing Amendment Act 2013*. The terms of reference require the taskforce to examine a range of issues across the wheat export supply chain and report on its findings. As Chair of the taskforce, I am pleased to provide the second of these reports: *Grain pools as financial products*.

In conducting the inquiry, the taskforce undertook a literature review before releasing a discussion paper for public comment. Thirteen submissions were received and considered by the taskforce in developing its final report.

The taskforce found that while an interest held by a farmer in a grain pool is recognised by the Australia Securities and Investment Commission as a managed investment product, grain pool operators are exempt from complying with some provisions of the *Corporations Act 2001*. The taskforce believes the removal of the exemption would not guarantee improved financial returns to growers and may, depending on individual circumstances, result in higher costs for pool operators and participants.

The taskforce supports recent industry efforts to increase the level of information disclosure required by pool operators through the Australian Grain Industry Code of Practice. The taskforce has recommended that the code be further strengthened to increase the level of clarity and risk assurance for operators and participants.

Thank you for the opportunity to provide this report.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Allan".

Dr Michele Allan
Chair
Wheat Industry Advisory Taskforce

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Executive Summary

In selling their grain, Australian grain growers have access to a number of marketing products, including grain pools. In recent years, however, some industry participants have raised concerns about the operation of some grain pools, claiming significant discrepancies between the estimated and final returns. As a potential solution to this issue, some groups have called for greater involvement by the Australian Securities and Investment Commission (ASIC).

Grain pools are considered a managed investment scheme under the *Corporations Act 2001* (the Act) and would normally be required to comply with all relevant provisions under the Act. However, due to an exemption granted by ASIC, grain pool operators do not need to comply with certain requirements, such as holding an Australian Financial Services licence or to provide a product disclosure statement.

The taskforce understands that the exemption, known as Class Order 02/211, was issued as a result of the minimal level of regulatory issues related to investor protection that would be addressed through these provisions. The class order is due to be reviewed before it sunsets in 2016.

During the course of its inquiry, the taskforce considered the relevant provisions of the Act and of the class order, and liaised directly with ASIC. It also considered the relatively new Australian Grain Industry Code of Practice, which includes a technical guidance document for grain pool operators.

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.

As such, the taskforce believes that an industry-driven solution, through the Australian Grain Industry Code of Practice, would be a more effective mechanism to address concerns related to the management of grain pools.

As part of its industry consultation process, the taskforce received several submissions that questioned the effectiveness of requirements for pool operators under the code and the veracity of the code's enforcement provisions generally. The taskforce found that while expulsion from Grain Trade Australia was a significant deterrent to breach the code, it agreed that the code could be strengthened.

Ultimately, it is up to growers to assess the risks and benefits of participating in pools, just as they do for any other marketing tool. However, implementation of the taskforce recommendations may assist to ensure pool participants, i.e. growers, are more informed before making the decision to commit to a pool.

Recommendations

Recommendation 1

The onus should remain with growers to assess the risk of pools and pool operators.

Recommendation 2

The taskforce recommends that the class order remain in place until its planned review and the remaining time be used to assess the effectiveness of the Australian Grain Industry Code of Practice.

Recommendation 3

The taskforce recommends that, in order to provide a greater level of risk assurance for participants and direction for pool operators, Grain Trade Australia should work with industry representative groups to further develop and refine the Australian Grain Industry Code of Practice, as it relates to the operation of pools.

Conduct of the inquiry

As required by its terms of reference, the Wheat Industry Advisory Taskforce has examined the provision of grain pools as financial products. The taskforce notes that the inquiry was directed at the oversight of grain pools as financial products, rather than the performance of individual pools or pool operators.

In undertaking its inquiry, the taskforce first conducted a review of the current arrangements, including corresponding directly with ASIC. The taskforce then developed a discussion paper and questions to further its understanding of pools and the terms and conditions of pool operations.

On 25 October 2013, a call for public submissions to the grain pools discussion paper was made through national newspaper and online advertisements. The taskforce wrote directly to 23 key stakeholder organisations and promoted participation through its website.

Thirteen submissions, from a range of stakeholders, were received and considered by the taskforce. A list of submissions received is at Appendix A.

Current arrangements

The taskforce understands a significant portion of wheat destined for export is marketed through pools each year. In the Australian marketplace, several different types of pool products are available through a range of companies, from those operating as sole traders to established multi-nationals.

ASIC is Australia's corporate, markets and financial services regulator. As part of this role, it licenses and monitors financial services businesses to ensure that they operate efficiently, honestly and fairly¹. This includes the regulation of financial products, such as managed investment products, derivatives and foreign exchange, under the *Corporations Act 2001* (the Act). ASIC also has the power to grant relief from the Act in certain circumstances.

An interest held by a farmer in a grain pool is recognised as a managed investment product, but pool operators are exempt from complying with some requirements of the Act through Class Order 02/211 *Managed investment schemes – interests not for money*. The class order was issued in February 2002 and carries over relief previously provided under Class Order 00/198.

The class order provides an exemption for those who operate a managed investment scheme, for example where interests are provided in relation to the sale or transfer of goods (including agricultural produce) produced in the ordinary course of a business by a potential participant. The class order was designed to facilitate commercial transactions which involve interests acquired through the provision of personal services, goods or produce, intellectual property or interests in land. It is important to note that the class order is not specific to grain pools, and may apply to other types of financial services outside the agricultural sector.

In addition to providing a general exemption, individual applications for relief may also be made, if they are considered to be in the spirit of the class order. For example, ASIC has granted relief on an individual basis for intermediaries involved in commodity pools in 'circumstances where they could not otherwise rely'² on the general provisions of the class order. In these cases, it was determined that applications were consistent with the underlying rationale for the class order and, as the intermediaries did not produce the goods involved in the transaction, the requirement to comply with all relevant provisions under the Act would be 'disproportionately burdensome'³ when taking into account the duration of the transaction, persons involved and potential consumer detriment.

¹ The role of ASIC, as described by the agency at <http://asic.gov.au/asic/asic.nsf/byheadline/Our+role?openDocument>

² ASIC letter to WIAT, 29 July 2013

³ Ibid

The class order is due to be reviewed by ASIC before it sunsets⁴ in 2016. If the class order is allowed to sunset, and the relief removed, ASIC's role will be expanded to regulate compliance with the managed investment provisions of the Act.

Finding 1

While grain pools are generally considered as a managed investment scheme, a class order provides an exemption to operators from having to comply with all relevant aspects of the *Corporations Act 2001*.

Exemptions from the *Corporations Act 2001*

The class order exempts certain persons from having to comply with the managed investment, financial product disclosure and licensing provisions of the Act. ASIC issued the class order in the belief that these activities did not have the regulatory issues relating to investor protection which would need to be addressed through compliance with these provisions.

Specifically, the class order exempts the operator of a relevant scheme, including grain pools, from the following key provisions:

Managed investment provisions (Chapter 5C of the Act)

Subject to particular exemptions and exceptions under the Act, managed investment schemes must be registered with ASIC in order to offer interests⁵ to retail clients. These schemes must comply with a range of provisions, including the development of a legally-enforceable constitution and compliance plan, as described separately in the Act, lodged with ASIC prior to registration. It is a requirement that the responsible entity of a registered scheme must be a public company that holds an Australian Financial Services (AFS) licence.

Holding of an Australian Financial Services Licence (Part 7.6 of the Act)

Subject to certain exemptions, a person who carries out a financial services business must hold an AFS licence for the provision of those financial services. Under the licensing arrangements, general obligations include having in place adequate arrangements to manage conflict related to the provision of the service (including internal and external dispute resolution procedures) and maintaining the competence of licensees and representatives to provide those services. Licensees are also required to notify ASIC of certain matters, including significant breaches or likely breaches of their obligations under the Act.

⁴ Terminates on a specific date, unless renewed

⁵ 'Interest' in a managed investment scheme means a right to benefits produced by the scheme (where the right is actual, prospective or contingent, and whether it is enforceable or not).

Grain pools as financial products

Anti-hawking provisions (Part 7.8 of the Act)

These provisions regulate the making of unsolicited invitations to sell financial products. Under the Act, a person must not offer financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call.

Providing a product disclosure statement (Part 7.9 of the Act)

The Act imposes various disclosure obligations on the provider of a financial product, including the requirement to supply a product disclosure statement and provide disclosure in certain circumstances. The information that needs to be disclosed includes periodic reports as well as information about material changes and significant events affecting the investment in the managed investment scheme.

Removal of the class order: possible compliance implications

If the class order was not in place, grain pool operators may be subject to additional compliance activities and associated costs. Depending on whether the class order is fully or partially revoked, pool operators may be subject to some or all of the compliance activities listed below.

Registration of a managed investment scheme

If the managed investment scheme has more than 20 members, was promoted by a person (or an associate) in the business of promoting investment schemes, or as otherwise determined by ASIC, the scheme will need to be registered.

The scheme must meet certain requirements under the Act to be registered, including having in place a constitution and compliance plan which meet specific criteria.

Under the Act, the constitution of a scheme is a legally enforceable document that must make adequate provisions for the powers and rights of the responsible entity, the method for dealing with complaints, the rights of the members to withdraw from the scheme and provisions to wind-up the scheme, amongst other things.

A compliance plan is also required and must set out measures that a responsible entity will apply to make sure that it complies with the law and the scheme constitution. The plan shall identify risks of non-compliance, establish measures to address these risks, and be subject to continuous monitoring, review and audit.

Licensing requirements

In order to operate a registered scheme, the responsible entity must be a registered Australian public company (which includes that it must be audited annually), and hold an AFS licence specifically authorising it to operate such a scheme.

Grain pools as financial products

To obtain an AFS licence, the responsible entity will need to provide evidence that it is competent to carry on the relevant financial services business, has sufficient financial resources (unless already regulated by the Australian Prudential Regulation Authority), and can meet other obligations as an AFS licensee.

A responsible entity is required to hold minimum financial requirements in order to operate a registered management scheme. In summary, there are financial requirements relating to:

- net tangible assets – the entity must hold the greater of \$150 000 or 0.5% of the average value of the scheme property (up to a maximum of \$5 million) or 10% of the average responsible entity's revenue
- liquidity – the entity must hold in cash (or equivalent) at least \$150 000 or 50% of the amount of the net tangible assets (whichever is the greater value)
- cash flow – positive net assets and solvency is required, as well as sufficient cash resources to cover the next 12-month's expenses with adequate cover for contingencies. Directors of the entity must sign-off on these projections quarterly.
- surplus liquid funds – requirement is \$50 000
- audit – completed annually.

Other requirements – compensation arrangements, dispute resolution for retail clients and product disclosure

A responsible entity is also required to have adequate compensation arrangements for retail clients in the event of loss or damage suffered because of breaches of relevant obligations. It must also have in place appropriate dispute resolution arrangements for these clients, which includes an internal procedure and membership to an external dispute resolution scheme which has been approved by ASIC.

Information about the scheme and the financial products is required to be given to retail investors when an offer or invitation to buy interests in the scheme is made to retail clients. The investors must also be informed of material changes and significant events affecting their investment.

The compliance activities listed above are not comprehensive. ASIC provides detailed advice on the requirements of each aspect described through regulatory guides available at www.asic.gov.au.

The taskforce believes that there may be some benefits in removing the class order, including:

- A product disclosure statement would be required to be produced prior to a farmer electing to contract or deliver into a pool
- Ring-fencing of assets and separate financial reporting on a regular basis is published to pool participants and available for ASIC to review as necessary

Grain pools as financial products

- A requirement for a constitution and appropriate independent governance, at arm's-length to other proprietary commodity trading activities of a pool provider, and documentation of decisions
- Regular reporting of performance
- A recognised and effective dispute resolution mechanism is mandatory
- Breaches are dealt with by an independent regulator under the *Corporations Act 2001*.

However, the taskforce believes the removal of the class order would not guarantee improved financial returns to growers. The taskforce understands that the financial performance of pools is largely affected by the marketing and management decisions of the pool operator, rather than governance arrangements.

The taskforce expects that, if the current exemption is removed, grain pool operators will experience a significant increase in compliance costs, the scale of which would depend on the nature of individual operations. For example, submissions to the taskforce estimated potential compliance costs between \$200 000 and \$500 000 depending on the size and complexity of the pool, the structure of the pool operator and specific compliance obligations⁶.

The taskforce also expects that it is possible that some operators may pass on these additional costs, either in part or in full, to participants. Alternatively, additional cost pressures may result in a significant reduction in the net-benefit of conducting the business for some operators, which could reduce the number of providers offering the service.

Finding 2

Growers should familiarise themselves with the written terms and conditions offered by any pool provider to be certain of the risks and benefits associated with pool participation before entering into a pool.

Recommendation 1

The onus of assessing the risks of pools and pool operators should remain with growers.

Australian Grain Industry Code of Practice

In response to concerns about the operation of grain pools, the Productivity Commission recommended that improving pool transparency would be best

⁶ Cargill, 2013 *Response to the Wheat Industry Advisory Taskforce*

Grain pools as financial products

undertaken by the industry 'through a detailed code of conduct'⁷. The commission did not identify any further role for government in this process.

In July 2013, Grain Trade Australia (GTA) released the Code of Practice for the Australian Grains Industry (available via www.gta.org.au). The code seeks to describe practices along the supply chain to ensure Australian grain and grain products meet domestic or export customer requirements, and includes protocols (through a technical guidance document) for grain pool providers.

GTA has confirmed that compliance with the code will be mandatory from 1 July 2014 for all GTA ordinary or post-farm gate members, of which most major pool operators in Australia are.

The *Technical Guidance Document No 4 - Operating Standards for Grain Pool Providers* requires that providers are compliant with a range of activities, such as publishing the terms and conditions of pool operations to all prospective pool participants. The type of detail required to be published may be comparable with the information required within a standard product disclosure statement.

Other key requirements include:

- Separation of pool assets and liabilities from other pools run by the pool provider and the general trading book
- Ability of pool participants to measure the pool performance against the strategy and management plan adopted by the pool provider
- That the pool provider must be able to justify the estimated pool return to pool participants
- An adverse material change to the estimated pool return of more than 5% needs to be notified to pool participants immediately
- Following closure of a pool, and within six months of the final payment of a pool, the pool provider will:
 - engage an independent auditor to audit:
 - the accounting records of the Pool
 - the Pool Provider's compliance with its duties under this code
 - the Pool Provider's compliance with the terms and conditions of the pool and
 - publish and deliver the findings of the auditor to pool participants.

The taskforce believes that while the current requirements are suitable, there may be a benefit to pool participants if they were strengthened. This view to increase the rigour and standards applied to pool operators through the code was also supported by a number of submissions, particularly those from grower representative organisations.

Opportunities for refinement could include publishing in greater detail the risk management, reporting obligations and operational timetable requirements of pool operators, including examples and standards which would be deemed sufficient for compliance with the code. It may also wish to consider the

⁷ Productivity Commission, 2010 *Inquiry into wheat export marketing arrangements*

Grain pools as financial products

requirement for pool operators to include information about dispute resolution processes when disclosing other product information. In doing so, the code will provide greater guidance, clarity and certainty to the sector.

Breaches of the industry code of conduct may attract a number of sanctions, including expulsion from GTA. However, consultation with industry has suggested that these enforcement provisions may be insufficient deterrents to guard against non-compliance. Several submissions to the taskforce suggested that the code be strengthened to provide for more significant penalties against breaches.

The taskforce considered the need for more robust disciplinary action to deal with contraventions of the code and considered the approach taken in other industries.

For example, in the horse breeding industry it is common practice to syndicate horses in a way that constitutes a managed investment scheme; that is, participants in the scheme share the cost of buying or leasing breeding stock. ASIC has issued a class order (Class Order [CO 02/172] *Horse breeding schemes—private broodmare syndication* and Class Order [CO 02/178] *Horse breeding schemes—private stallion syndication*) which grants relief from provisions in the Act similar to the class order for grain pools.

However, the horse breeding class order includes that an ASIC-approved industry organisation, such as the Darwin Turf Club, take a 'lead regulator' role in ensuring compliance specific conditions. This co-regulator arrangement enables industry to assume a greater role in monitoring and compliance, and is formalised within the class order. Non-compliance with the class order is considered a breach against the Act, which can attract significant penalties.

While the co-regulation arrangement could be seen as a potential solution to increase the rigour of the code of conduct, a 'lead regulator' with the necessary expertise to perform a monitoring function for grain pools would need to be identified. It should also be noted that the financial costs of this model would need to be met by industry. If there was an appetite within the industry for this type of arrangement, then a strong business case would need to be developed and submitted to ASIC.

There may be an opportunity for the effectiveness of the code, and any potential changes to the class order, to be assessed by ASIC in its planned review of the class order, which is scheduled within the next three years. Until that time, the taskforce believes that expulsion from GTA would cause significant reputational damage and potentially impact on future business opportunities for the affected party.

Recommendation 2

The taskforce recommends that the class order remain in place until its planned review and the remaining time be used to assess the effectiveness of the Australian Grain Industry Code of Practice.

Recommendation 3

The taskforce recommends that, in order to provide a greater level of risk assurance for participants and direction for pool operators, Grain Trade Australia should work with industry representative groups to further develop and refine the Australian Grain Industry Code of Practice, as it relates to the operation of pools.

Conclusion

The taskforce acknowledges the concerns of some stakeholders about the operation of grain pools, which appears to be focused on the difference between estimated and final price returns.

Through its inquiry, the taskforce confirmed that an interest held by a farmer in a grain pool is recognised by ASIC as a managed investment product. However, due to minimal regulatory issues experienced by investors, grain pool operators are exempt from complying with some requirements of the Act through a class order.

The taskforce believes the removal of the class order would not guarantee improved financial returns to growers and may, depending on individual circumstances, result in higher costs to participate in the pool. Further, it may reduce the number of pool products available to the market.

The taskforce found that industry has attempted to address concerns through an Australian Grain Industry Code of Practice. The taskforce supports the development and refinement of the code, and has recommended that it be further strengthened to increase the level of clarity and risk assurance for operators and participants. The taskforce believes that, while the full effects of this industry code are yet to be seen, the implementation of the non-regulatory mechanism is likely to encourage a change in practice, where required, without significant increases in compliance costs.

References

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- Australian Securities and Investment Commission, 2007, *Regulatory Guide 80 - Managing investment schemes – interests not for money*
- Australian Securities and Investment Commission, 2002, *Class Order 02/211 Managed Investment Schemes – Interests not for money*
- Australian Securities and Investment Commission, 2002, *Class Order 02/172 Horse breeding schemes—private broodmare syndication*
- Australian Securities and Investment Commission, 2002, *Class Order 02/178 Horse breeding schemes—private stallion syndication*
- Grain Trade Australia, 2013, *Revised Code of Practice Requirements for Pool Providers*
- Grain Trade Australia, 2013, *Technical Guidance Document No 4 - Operating Standards for Grain Pool Providers*
- Productivity Commission, 2010, *Inquiry into Wheat Export Marketing Arrangements*

Appendix A Submissions received by the Wheat Industry Advisory Taskforce

ID Number	Organisation
1111-1	PentAg Nidera Pty Ltd
1211-1	Emerald Grain Pty Ltd
1511-01	Grain Trade Australia
1511-02	Victorian Farmers Federation, Grains Group
1511-03	Name withheld
1511-04	Name withheld
1811-01	Pastoralists and Graziers Association of Western Australia
1911-01	Cargill Australia Limited
1911-02	Name withheld
2011-01	PPB Advisory
2011-02	NSW Farmers' Association
2111-01	Name withheld
2211-01	Graincorp Operations Ltd