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### **ASIC Class Order Exemptions Review – Grain Commodity Pools**

The Victorian Farmer’s Federation (“VFF”) Grains Group provide this submission to the Australian Securities and Investments Commission (“ASIC”) regarding the review of ASIC class orders on managed funds as they apply to grain pool products.

VFF Grains Group supports the need for an open, efficient, and transparent market to promote competition amongst commodity pool providers in the grains industry.

VFF consider that regardless of whether the general ASIC class order exemptions are renewed, that grain pools should no longer be granted exemptions under Class Order 02/211 given they meet the criteria of a managed investment product.

VFF consider there is clearly a need to provide greater assurance, confidence and protections to farmers as consumers of grain pool managed products just as there exists for any other user of managed investment products.

VFF consider there is no justification for farmers to be afforded any less protection than the rest of the population utilising managed investment products in the Australian market. Similarly there is limited if any justification as to why providers of these products should be exempt from ASIC oversight applicable to the rest of the market.

VFF consider the Grain Trade Australia (“GTA”) Industry Code-of-Practice technical guidance note regarding pool operators (“the Code”) as it stands is non-binding and does not provide any enforceable discipline on grain pool managers to adhere to the code, nor assurance or recourse for growers, and as a result has not improved market confidence.

The VFF have previously recommended that GTA investigate and implement a compliance regime to improve confidence in the proposed GTA Code of Practice which could comprise:

1. Changing the voluntary code to a prescribed industry code to enable the ACCC to investigate breaches and enforce compliance, and/or
2. That the ASIC class order exemptions from the financial services licensing and managed investment scheme provisions of the Corporations Act 2001 should be amended to require participation in the GTA Code, and that a breach (or significant breach) of the Code be considered a breach of the exemption resulting in the application of the Corporations Act in full to the relevant grain pool manager.

Given this has not occurred, and there appears limited appetite by industry to provide a more enforceable compliance regime, then the simplest and most readily implemented alternative is that grain pools should no longer be able to avail themselves of the ASIC exemptions under the Corporations Act 2001.

VFF's less preferred, but an alternate option may be as described above, that in granting an exemption to a pool manager ASIC as a condition of exemption require compliance with the GTA Code, noting that (significant) breaches should be considered a breach of the exemption.

There may be some justification for ASIC to grant partial relief for intermediaries involved in managing grain pools for certain specific sections of the Act in circumstances where those criteria would be deemed inconsistent or irrelevant to managing a grain pool and the requirement to comply would be considered disproportionately burdensome. However, defining such individual criteria either by exception under an exemption, or under a mandatory code, should still address fundamental criteria.

VFF consider that as the majority of Australian grain pool providers have Australia Financial Services Licenses and have now had the opportunity to mature and evolve during and subsequent to deregulation of the industry in 2008, that compliance with Australian Financial Services Licensing requirements is reasonable and would *not* be considered disproportionately burdensome.

Requirements for transparency & pool performance reporting, potentially via a Product Disclosure Statement ("PDS"), periodic disclosure reports, and material changes reports would be seen as reasonable requirements of a managed pool.

Greater capital backing / liquid asset requirements may arguably add cost, however this should *not* be considered disproportionately burdensome given the assurance and confidence this provides users of the product and the market place in general. This said such limits may require review in the context of what is a 'reasonable' level of liquid assets / capital backing to effectively manage a grain pool product.

Such ASIC oversight provides the discipline, rigour, and enforceable framework that is provided by an independent regulator under the Corporations Act 2001 and necessary to both ensure compliance and market confidence.

In conclusion, VFF consider there is clearly a need to provide greater protection, assurance, and confidence to farmers as consumers of grain pool managed products just as there exists for any other user of managed investment products. If you have any questions please do not hesitate to contact myself or Stephen Sheridan at the VFF Grains Group office.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Brett Hosking', written in a cursive style.

**Brett Hosking**

**President, Victorian Farmers Federation Grains Group**

**Vice President, Victorian Farmers Federation**