

[CO 04/1575]

Managed investment schemes: unit pricing

Issued 22/12/2004

Class Order [CO 04/1575] allows responsible entities to make amendments to constitutions of managed investment schemes without a special resolution of members. Amendments can be made so specified references to accounting standards in constitutions are to accounting standards in force immediately prior to 1 January 2005 and are not affected by the transition for financial reporting purposes to Australian equivalents of International Financial Reporting Standards. Any such amendments must substantially preserve the rights of members as they were before the amendment.

<i>Amended by Class Orders</i>	<i>Date of operation</i>
[CO 05/641]	28/7/2005

For details of amendments see historical notes in this class order.

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 601QA(1)(b) — Declaration

Under paragraph 601QA(1)(b) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission declares that Chapter 5C of the Act applies to all persons in relation to a registered scheme as if provisions of that Chapter were modified or varied as follows:

1. in section 601FC insert after subsection (1):
“(1A)A responsible entity is not to be taken to have failed to act in accordance with paragraph (1)(c) only because the responsible entity makes modifications of the scheme constitution of the kind covered by subsection 601GC(1A).”.
2. in section 601FD insert after subsection (1):
“(1A)An officer of the responsible entity is not to be taken to have failed to act in accordance with paragraph (1)(c) only because the officer was involved in the responsible entity making modifications of the scheme constitution of the kind covered by subsection 601GC(1A).”.
3. in section 601GC insert after subsection (1):

“(1A) For the purposes of paragraph (1)(b), a modification of the scheme’s constitution is taken not to adversely affect members’ rights if all of the following apply:

- (a) Before the modification the constitution has the effect that any or all of the following are to be worked out by reference to the value of any scheme property or to the amount of any liability that under the constitution may be discharged from that property where that value or amount is to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard as generally accepted or in force from time to time:
 - (i) the consideration that is to be paid to acquire an interest in the scheme;
 - (ii) the amount to be paid on a withdrawal from the scheme;
 - (iii) the fees payable to the responsible entity, any agent of the responsible entity or any custodian who holds scheme property;
 - (iv) the extent of any limitation on borrowings or on the investment of scheme property;
 - (v) the amount of a distribution payable to members of the scheme; and
- (b) After the modification the constitution has the effect that for the purposes of working out the value of any scheme property or the amount of any liability that is relevant to working out any of the matters referred to in subparagraphs (a)(i) to (v), generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005 may instead be applied in working out the relevant value or amount; and
- (c) The responsible entity reasonably believes that the rights of members under the constitution as modified will be substantially the same immediately before and after the modification takes effect but for any change in generally accepted accounting principles or accounting standards that takes place on 1 January 2005 for reporting periods beginning on or after that date.

Note: Nothing in this provision or included in a scheme constitution in reliance on this provision affects the operation of Chapter 2M. The valuation of scheme property for the purposes of the preparation of financial reports for reporting periods beginning on or after 1 January 2005 must be in accordance with the applicable accounting standards.

(1B) A responsible entity that makes modifications of the scheme constitution of the kind covered by subsection (1A) must give each member of the scheme a notice in writing that sets out the reason for, and the effect of, the modifications. The notice must be:

(a) given no later than the date of the giving of the first communication by the responsible entity to all members of the scheme after the date when the modifications are made; and

(b) worded in a clear, concise and effective manner.”.

[*Historical note:* Paragraph 3 amended 28/7/2005 [CO 05/641] by :

(a) in the introductory words of notional subsection 601GC(1A) omitting “both” and substituting “all”; and

(b) in paragraph (b) of notional subsection 601GC(1A) omitting “subparagraphs (a)(i)(A) to (E),” and substituting “subparagraphs (a)(i) to (v),’.]

Dated this 22nd day of December 2004

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