



ASIC

Australian Securities & Investments Commission

[CO 02/214]

Differential fees

Issued 20/2/2002

Class Order [CO 02/214] provides an exemption from s601FC(1)(d) of the Corporations Act in relation to the imposition of certain differential fee arrangements by responsible entities of registered managed investment schemes. This class order revokes [CO 01/50].

This class order came into effect on 11 March 2002 upon commencement of Schedule 1 to the Financial Services Reform Act 2001: see paragraph 4(2A)(c) of the Acts Interpretation Act 1901.

<i>Amending Class Order</i>	<i>Date of operation</i>
[CO 02/1354]	17/12/2002

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 601QA(1)(a) — Revocation and
Exemption

- 1 Under paragraph 601QA(1)(a) of the *Corporations Act 2001* (the “Act”) the Australian Securities and Investments Commission (“ASIC”) hereby revokes Class Order [01/50].
- 2 Under paragraph 601QA(1)(a) of the Act ASIC hereby exempts each person referred to in Schedule A from paragraph 601FC(1)(d) of the Act in the cases referred to in Schedule B on the conditions set out in Schedule C and for so long as they are met.

SCHEDULE A

The responsible entity of a registered scheme (the “responsible entity”).

SCHEDULE B

- 1 The charging, rebating or waiving of fees including entry, exit and periodic fees (“management fees”) by the responsible entity to members on a basis that differs from that applying to other members of the same class and that is based on:
- (a) the total value of interests held by the member in the scheme or in the scheme together with the total value of any or all of the following:
 - (i) interests in all or any specified other managed investment schemes operated by the responsible entity or a related body corporate of the responsible entity;
 - (ii) all or any specified investment life insurance products issued by the responsible entity or a related body corporate of the responsible entity;
 - (iii) all or any specified superannuation products issued by the responsible entity or a related body corporate of the responsible entity;

or

 - (b) the member having acquired their interests under a switching facility that involved the member first withdrawing from another managed investment scheme operated by the responsible entity.

[Historical note: Para (1)(a) was replaced on 17/12/2002 [CO 02/1354]. The paragraph formerly read:

“(a) the total value of interests held by the member in the scheme or in the scheme together with all or any specified other managed investment schemes operated by the responsible entity;”.]

- 2 The charging, rebating or waiving of management fees by the responsible entity to a member who acquired their interests in the scheme in response to an offer:
- (a) made before the Effective Date and to which subsection 708(8) or subsection 708(11) of the Act applied as at the time of the offer (“sophisticated or professional investor”); or
 - (b) made on or after the Effective Date to a wholesale client within the meaning of section 761G of the Act,
- on a basis that differs from that applying to other members who

hold interests of the same class and that is based on individual negotiation between the responsible entity and that member.

SCHEDULE C

- 1 The responsible entity must ensure that:
 - (a) where a differential fee arrangement of a kind referred to in paragraph 1 of Schedule B is in place or is to be offered, a statement of the basis upon which the differential fee will be calculated and which specifies the fees members will have to bear; and
 - (b) where a differential fee arrangement of a kind referred to in paragraph 2 of Schedule B is in place or is to be offered to certain sophisticated or professional investors or wholesale clients within the meaning of section 761G of the Act, a statement of that fact,

is or has been disclosed:

 - (c) to existing members of the scheme by no later than the date of the first communication by the responsible entity to all members both after:
 - (i) the date when the differential fee arrangement is first offered; and
 - (ii) 18 March 2001; and
 - (d) in any disclosure document or Product Disclosure Statement required by the Act in relation to the scheme.
- 2 The responsible entity must ensure that the differential fee arrangements referred to in Schedule B do not adversely affect the fees that are paid or to be paid by any other member of the scheme who is not a party to those fee arrangements.

Interpretation

For the purposes of this instrument:

“Commencement Date” means the date of commencement of Schedule 1 to the *Financial Services Reform Act 2001*;

“Effective Date” means:

- (a) for a managed investment scheme in which no interests of the same class were issued before the Commencement Date – the Commencement Date; and
- (b) for any other scheme – the date on which the new product disclosure provisions (as defined in section 1438 of the Act) first apply in relation to interests in the scheme;

“investment life insurance product” has the same meaning as in section 761A of the Act; and

[Historical note: defn “investment life insurance product” inserted 17/12/2002 [CO 02/1354].]

“superannuation product” has the same meaning as in section 761A of the Act.

[Historical note: defn “superannuation product” inserted 17/12/2002 [CO 02/1354].]

Commencement

This instrument takes effect on the Commencement Date.

Dated the 20th day of February 2002

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