



ASIC

Australian Securities & Investments Commission

[CO 02/224]

**Relief from the consideration to acquire
constitutional requirement - amendment**

Issued 21/2/2002

Class Order [CO 02/224] varies Class Order [CO 98/52].

***This class order comes 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.***

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 601QA(1)(a) and (b) —
Variation

Under paragraphs 601QA(1)(a) and (b) of the *Corporations Act 2001* and with effect from the commencement of Schedule 1 to the *Financial Services Reform Act 2001*, the Australian Securities and Investments Commission hereby varies Class Order [98/52] by:

1. omitting from the heading the word “Law” and substituting the words “Act 2001”;
2. omitting from the introductory words, the words “Corporations Law (the “Law”)” and substituting the words “*Corporations Act 2001* (the “Act”)”;
3. in the words notionally added at the end of paragraph 601GA(1)(a) of the Act by the Class Order:
 - (a) omitting from paragraph (i):
 - (i) the words “Official List of the Exchange”, and substituting the words “official list of the financial market operated by Australian Stock Exchange Limited”; and
 - (ii) the words “Corporations Regulations”, and substituting the words “*Corporations*

Regulations 2001”;

- (b) omitting from subparagraph (i)(A) the words commencing with “or before the registration” and finishing with “subparagraph 1069(1)(b)(ii) of the Law” and substituting the words “in accordance with subparagraphs (C) to (H) and issues in accordance with other provisions of the constitution”;
- (c) omitting from paragraph (iii), the words “jurisdiction outside Australia” and substituting “place outside this jurisdiction”;
- (d) omitting from paragraph (iv), the words “jurisdiction outside Australia” and substituting “place outside this jurisdiction”;
- (e) omitting from paragraph (v), the words “jurisdiction outside Australia” and substituting “place outside this jurisdiction”;
- (f) omitting from paragraph (vi) the word “Exchange” and substituting the words “financial market operated by Australian Stock Exchange Limited”;
- (g) omitting from subparagraph (vi)(B) the word “Law” and substituting the word “Act”; and
- (h) omitting paragraph (vii) and substituting the following text:
 - “(vii) interests in the scheme may be issued at a price individually negotiated and agreed between the responsible entity and a person:
 - (A) where the new product disclosure provisions (as defined in section 1438 of the Act) do not apply to those interests at the time of the offer - who acquires their interests in response to an offer to which subsection 708(8) or subsection 708(11) of the Act applies (“sophisticated or professional investor”); or
 - (B) where those new product disclosure provisions apply to those interests at the time of the offer - who is a wholesale client within the meaning of section 761G of the Act (“wholesale client”),

being a price that differs from the consideration otherwise provided for in the constitution only to the extent that the price is less than that other consideration to the extent of lower fees that are payable to the responsible entity in relation to the acquisition (each a “Fee Arrangement”) if:

- (C) the responsible entity ensures that if fees may be individually negotiated with certain sophisticated or professional investors or wholesale clients, a statement of that fact is disclosed to all members of the scheme by no later than the date of the first communication the responsible entity makes to all members which is made after the date the Fee Arrangement is first offered;
 - (D) the responsible entity ensures that if fees may be individually negotiated with certain sophisticated or professional investors or wholesale investors, a statement of that fact is disclosed in any disclosure document or Product Disclosure Statement (as applicable) used for an offer of interests in the scheme; and
 - (E) the Fee Arrangement does 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 the Fee Arrangement.”;
4. omitting from the paragraph commencing “And pursuant to”:
- (a) the word “Law” in both places where it occurs, and substituting the word “Act”; and
 - (b) the words “jurisdiction outside Australia”, and substituting the words “place outside this jurisdiction”;
5. adding after the paragraph commencing “And pursuant to” the following note:
- “Note: In this instrument, “this jurisdiction” means Australia: Act, ss 5 and 9 (definition of “this jurisdiction”).”

Dated this 21st day of February 2002

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