

ASIC CLASS ORDER [CO 08/1]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Paragraphs 601QA(1)(a) and 911A(2)(1) – Exemptions

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 08/1] *Group purchasing bodies* under paragraphs 601QA(1)(a) and 911A(2)(1) of the *Corporations Act 2001* (the Corporations Act).

Paragraph 601AQ(1)(a) provides that ASIC may exempt a class of persons from the provisions of Chapter 5C of the Act. Paragraph 911A(2)(1) provides that ASIC may exempt a class of persons from the requirement to hold an Australian Financial Services Licence (AFS licence) under Part 7.6 of the Corporations Act.

1. Background

A variety of bodies deal in financial products by arranging for cover under life or general risk insurance products or facilities for managing financial risk (risk management products) that are issued by other persons to cover their members or other persons. Unlike insurance brokers, some of these bodies, which ASIC refers to as ‘group purchasing bodies’, do not provide any financial product advice except when providing general information about the cover.

Group purchasing bodies may be carrying on a financial services business and therefore require an AFS licence under Ch 7 of the Corporations Act unless they are an authorised representative of an AFS licensee or otherwise exempt.

Further, some group purchasing bodies may enter into arrangements that constitute a managed investment scheme required to be registered under Ch 5C of the Corporations Act. Under these arrangements some of the contributions that the group purchasing body receives from persons to obtain cover under a risk management product are pooled or used in a common enterprise to produce financial benefits for the contributors. The financial benefits arise through better cover or lower cost of cover or more favourable terms of payment for cover. ASIC refers to these arrangements as risk management schemes.

The provisions of Ch 5C and Ch 7 of the Corporations Act are primarily designed to protect clients by imposing obligations on issuers and distributors (sellers) of financial products. However, in some situations, the role played by group purchasing bodies is more comparable to that of the consumer (purchaser) of risk management products rather than that of a seller.

2. Purpose of the class order

The purpose of Class Order [CO 08/1] is to facilitate and regulate the conduct of group purchasing bodies that are eligible for the exemptions in the Class Order in arranging and holding risk management products or operating a risk management scheme.

3. Operation of the class order

Class Order [08/1] is issued in accordance with ASIC policy stated in RG 195 *Group purchasing bodies for insurance and risk products* (RG 195).

The Class Order provides ongoing conditional relief for eligible group purchasing bodies from the obligations:

- (a) under Ch 7 of the Act, to hold an AFS licence for providing the following financial services in relation to risk management products:
 - (i) dealing;
 - (ii) providing a custodial or depository service; and
 - (iii) providing financial product advice by providing the general information required to be given under the exemption; and
- (b) under Ch 5C, to register risk management schemes.

Eligibility

Class Order [CO 08/1] provides relief from the requirements of Chs 5C and 7 to a person who:

- (a) does not carry on a business of issuing risk management products;
- (b) does not provide any financial product advice in relation to a risk management product other than within the exemption;
- (c) has not been excluded from reliance on [CO 08/1] by notice from ASIC;
- (d) after 30 September 2009, has not failed to comply with the requirement to provide ASIC with written full particulars of matters that give it reason to believe that it has materially failed to comply with the requirements of [CO 08/1] (within 10 business days of it having the reason to believe); and
- (e) either meets tests of independence specified in the class order, or arranges cover under a risk management product in a manner that is incidental to its not for profit activities.

Conditions

The relief under Class Order [CO 08/1] is available when all of the following key conditions are satisfied:

- (a) in certain circumstances, the group purchasing body must ensure that the issuer has agreed under the terms of the risk management product to treat any person who has made a payment to the group purchasing body for cover as having paid the money to the issuer for the risk management product;
- (b) the group purchasing body must:
 - (i) promptly notify each person relying on cover if cover is not effected within the period that it would be reasonable for the person to believe it would be effected or if the cover is cancelled or not renewed unless the group purchasing body reasonably believes that substantially similar cover applies under another financial product. The obligations must be enforceable by each person relying on cover; and
 - (ii) establish a facility by which persons who may be relying on the cover can check with the issuer, an AFS licensee or an authorised representative for themselves if the insurance policy is in effect; and
- (c) the group purchasing body must ensure that clients are provided with certain general information about the group purchase arrangements under which clients are to be covered.

4. Consultation

ASIC issued *Consultation Paper 80: Group insurance arrangements* on 7 May 2007. ASIC received submissions from a range of industry associations and private industry bodies. Following a review of the submissions, ASIC held meetings with most of the parties who had made submissions. Following these meetings, ASIC received further submissions from certain of the submitting parties. The submitting parties were generally supportive of the proposal for class order relief. The relief has been refined from that proposed to address the concerns of the submitting parties.

ASIC has prepared a Regulatory Impact Statement for this class order relief, which has been approved by OBPR (see attachment).