

# ASIC Class Order [CO 08/1]

## Group purchasing bodies

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*Related document: [RG 195]*

*Class Order [CO 08/1] relieves an eligible group purchasing body from the requirement to:*

- *hold an Australian financial services licence under Ch 7; and*
- *register a managed investment scheme under Ch 5C*

*where the group purchasing body satisfies the requirements of eligibility, complies with the conditions and has not been excluded from the relief by ASIC.*

This instrument has effect under s601QA(1)(a) and 911A(2)(l) of the *Corporations Act 2001*.

Prepared by the Australian Securities and Investments Commission.

## **Australian Securities and Investments Commission Corporations Act 2001 — Paragraphs 601QA(1)(a) and 911A(2)(l) — Exemption**

### **Enabling legislation**

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraphs 601QA(1)(a) and 911A(2)(l) of the *Corporations Act 2001* (the *Act*).

### **Title**

2. This instrument is ASIC Class Order [CO 08/1].

### **Commencement**

3. This instrument commences on the later of:
  - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
  - (b) the date of its gazettal.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

## Exemptions

4. A group purchasing body does not have to:
  - (a) comply with section 601ED of the Act in relation to the operation of a risk management scheme; or
  - (b) hold an Australian financial services licence covering the provision of the following financial services:
    - (i) dealing in a risk management product or an interest in a risk management scheme operated by the body;
    - (ii) providing a custodial or depository service by holding a risk management product on trust for or on behalf of another person;
    - (iii) providing financial product advice in relation to a risk management product or an interest in a risk management scheme operated by the body to the extent that that advice is provided as a result of the body giving information or statements under subparagraph 10(e).
5. A group purchasing body may rely on the exemptions in paragraph 4 only where both of the following are satisfied:
  - (a) the body:
    - (i) does not carry on a business of issuing risk management products other than interests in a risk management scheme; and
    - (ii) does not provide any financial product advice in relation to a risk management product other than financial advice covered by sub-subparagraph 4(b)(iii);
  - (b) either:
    - (i) the body:
      - (A) provides financial services only incidentally to another relationship with the persons who will be covered by the risk management products to which the financial services relate or the risk management scheme relates; and
      - (B) does not carry on any financial services business in order to make monetary payments to members; or
    - (ii) the body meets the requirements of paragraph 6.
6. A body meets the requirements of this paragraph if it:

- (a) does not receive any payments, remuneration or other benefits that are related to the provision of financial services in relation to a risk management product or an interest in a risk management scheme, except for:
  - (i) payments from a member of the body which are separately identified in dollars in a written request for payment or written statement of the amount payable given by the body to the member;
  - (ii) rebates for which the body has an obligation to promptly pay an equivalent amount to persons who have paid for cover under the risk management product (other than the body or its associates); and
  - (iii) payments under a multinational pooling arrangement; and
- (b) is not an associate of:
  - (i) any person who carries on a business of issuing risk management products other than interests in a risk management scheme; or
  - (ii) a financial services licensee or any authorised representative of such a licensee who deals in or provides financial product advice about a risk management product,

except for an association under the terms of a multinational pooling arrangement.

7. A group purchasing body relying on the exemption in subparagraph 4(a) must comply with the conditions set out in subparagraphs 10(a) to (e).

### **Exclusion from relying on this instrument**

- 8. A group purchasing body cannot rely on the exemptions in paragraph 4 if the body fails to comply with subparagraph 10(f).
- 9. A group purchasing body cannot rely on the exemptions in paragraph 4 if ASIC has given a notice to the body which states that the body cannot rely on this instrument, and ASIC has not withdrawn the notice. The notice may be given by sending it to the body's address last known to ASIC.

### **Conditions**

- 10. The group purchasing body must:

- (a) ensure that the making of a group purchase payment by a person to the body has the effect of:
  - (i) where the product is to be issued to the person—as between the person and the issuer of the risk management product to which the payment relates, discharging any liability of the person under or in respect of the product to the extent of the payment; or
  - (ii) where the product has been or is to be issued to the body—as between the person and the issuer of the risk management product to which the payment relates, discharging the liability of the body under or in respect of the product in relation to the person to the extent of the payment;

Note: This provision is based on section 985B of the Act. The body could, for example, meet this condition by appropriate contractual/agency arrangements with the insurer.

Note: This provision does not require an arrangement that affects the rights of the issuer of the risk management product to recover the payment from the body.

- (b) promptly notify in writing each person to whom it provides financial services relating to the risk management product and who may reasonably believe they will be covered by the product, if:
  - (i) it is not reasonable to expect that the cover will apply for the period represented to the person, whether in writing or otherwise; or
  - (ii) the product is, or likely to be, cancelled or not renewed, unless substantially similar cover applies or will apply for the period (or remainder of the period) represented to the person; and

- (c) enter into an obligation under which the body is liable to compensate any person who suffers loss or damage as a result of the body failing to comply with subparagraph (b);

Note: This obligation may be created in any way provided it is capable of being enforced. It may, for example, be created by the terms of a contract or by deed poll.

- (d) establish a facility by which each person to whom it provides financial services relating to the risk management product and who may reasonably believe they will be covered by the product may, by taking reasonable steps, verify with the issuer of the product or a financial services licensee or an authorised representative acting on behalf of the issuer or licensee, without charge, that the product has been issued to the person or the body and remains current; and

- (e) give, as soon as practicable after the body has reason to believe that the financial services to which the risk management product relates will be provided to a person, and if the person to be covered by the product may elect whether to be covered or not, before the election is made, the following information and statements in writing to the person:
- (i) general factual information about the nature of the cover provided by the product (including the period for which the cover will apply) and the role of the body in providing the financial services to which the product relates; and
  - (ii) a statement that the body will ensure that a person who requests a copy of the terms and conditions of the product will be given, without charge, a copy within a reasonable time after the request; and
  - (iii) information about any amounts payable by the person to obtain the cover under the product; and
  - (iv) if the body will receive payments (*rebates*) from the issuer of the product or any financial services licensee or their associates to arrange for the issue of a risk management product or for a person to be covered by an existing risk management product, the amounts (if any) that will be paid to the person to be covered by the product from those rebates or, if the amounts cannot be ascertained, general information about how the amounts will be determined; and
  - (v) a statement that the body does not hold an Australian financial services licence and that the person should consider obtaining their own financial product advice about the product from a person who is able to give such advice under an Australian financial services licence; and
  - (vi) information about the obligation described in subparagraph (c) and sufficient information relating to the facility described in subparagraph (d) to enable the person to use it; and
- (f) give ASIC full particulars in writing of matters that give the body reason to believe that it has failed, other than in an immaterial respect, to comply with any requirement of subparagraphs (a) to (e) after 30 September 2009 within 10 business days of its having the reason to so believe.

## Interpretation

### 11. In this instrument:

**authorised representative** has the meaning given by section 761A of the Act.

**control** has the meaning given by section 50AA of the Act.

**custodial or depositary service** has the meaning given by section 766E of the Act.

**financial product advice** has the meaning given by section 766B of the Act.

**group purchasing body** means a body which arranges for the issue of a risk management product or for a person to be covered by an existing risk management product.

**group purchase payment** means a payment made by a person to the group purchasing body under an arrangement whereby the body will make a payment to the issuer of the risk management product for or under the product that will enable the person to be covered by the product and either:

- (a) the product is to be issued to that person; or
- (b) when the product is held by the group purchasing body, the cover is to apply by extension to that person as a named individual under the terms of the product (including any schedule to the product) for an additional payment made to the issuer of the risk management product.

**issue** and **issuer** have the meanings given by section 761E of the Act.

**member**, in relation to a group purchasing body, means:

- (a) where the body is a company—a member of that company; and
- (b) otherwise—a person who is treated as a member of the body under its constituent documents and has agreed to be a member of the body.

**multinational pooling arrangement** means an arrangement under which life, total and permanent disability or income protection insurance is to be issued that:

- (a) is substantially arranged between bodies which are incorporated or formed outside this jurisdiction and where the majority of the persons who are covered by the insurance are situated outside this jurisdiction; and
- (b) covers employees of, or persons contracted to provide services to, the group purchasing body or another entity

which controls the body or which is controlled by the body;  
and

- (c) provides for payments to be received by the group purchasing body based on claims experience for all those covered by the insurance under the arrangement.

***risk management product*** means a financial product of the kind referred to in paragraphs 764A(1)(d), (e) or (f) or paragraph 763A(1)(b) of the Act other than a general insurance product that a financial services licensee must not deal in because of section 985D of the Act.

***risk management scheme*** means a managed investment scheme under which monies are contributed and are pooled or used in a common enterprise to confer the following benefits on the persons contributing:

- (a) lower costs to secure cover, or the securing of cover on more favourable terms, under a risk management product issued by a person who is not, and is not associated with, the group purchasing body operating the scheme; and/or
- (b) the availability of cover, which would not otherwise be available, under such a risk management product;

but does not include a scheme which entitles the persons contributing to receive any distributions of scheme property other than:

- (c) payments that are directly attributable to the cover provided by the risk management product; and/or
- (d) payments received from the issuer of the product or any financial services licensee or their associates for arranging for the persons to be covered by the product.

***scheme property***, in relation to a risk management scheme, means:

- (a) contribution of money or money's worth to the scheme; and
- (b) money borrowed or raised by the group purchasing body for the purposes of the scheme; and
- (c) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a) or (b); and
- (d) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b) or (c).

12. This instrument applies in relation to a group purchasing body that is not incorporated with the following changes:
- (a) the exemptions in paragraph 4 may be relied on by an office bearer or employee of the body authorised by the body to do so;
  - (b) a condition that would be imposed on the body is imposed instead on each office bearer of the body but may be discharged by any of them or by an employee of the body;
  - (c) a notice that is required to be sent to the address of the body may instead be sent to the address of an office bearer or employee of the body.

Dated this 25th day of September 2008

Signed by Brendan Byrne

as a delegate of the Australian Securities and Investments  
Commission