

# MemberUpdate

UPDATE 13 of 16 • 1 September 2016

**TOPIC: ASIC Consultation Process - Grain Pools Financial Regulations Exemption**

*DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.*

## Background

GTA wish to advise its members of the imminent review by the Australian Securities and Investment Commission (**ASIC**) of the current exemption provided to managed investment schemes (interests not for money) (**Scheme**) from specific financial regulations. Grain pools fall under the definition of a Scheme.

The current exemption is provided under ASIC class order 02/212 (**Class Order**). The Class Order is a relief order granted by ASIC to exempt Schemes from all managed investment scheme provisions of the *Corporations Act 2001* (**Act**).

Unless ASIC take action to preserve the Class Order, it will automatically expire in April 2017 (**Sunset Date**). Therefore, ASIC has commenced a consultation process (**Consultation Process**), in order to invite industry submissions in relation to whether the Class Order is maintained in its current form, a varied form or removed altogether.

## Summary

GTA is currently considering its position on the Class Order and intends to make a submission to ASIC under the Consultation Process.

## The Class Order

Ordinarily, grain pools are generally captured under the definition of a managed investment schemes. Such schemes attract a number of compliance requirements under the Act, however for the past 10 years ASIC has granted relief to Schemes through the Class Order.

The regulatory provisions in the Act that the Class Order exempts Schemes from are:

1. the requirement to **register the scheme** with ASIC (subsection 601ED(5));
2. the requirement for a person to hold an **Australian financial services licence** (subsection 911A(1));
3. the prohibition of **hawking** (unsolicited marketing of managed investment schemes) (section 992A); and
4. the obligation to provide a **Product Disclosure Statement** (Part 7.9).

GTA notes that Industry has implemented a self-regulatory framework for the grains industry including the Australian Grain Industry Code of Practice (which includes a complaints process) and a Technical Guideline of Operating Standards for Pool Providers. Compliance with the Code of Practice is a mandatory requirement for GTA Members.

Further industry participants, not just GTA members, have access to the GTA Arbitration and Dispute Handling process should that be incorporated into grain contract terms.

It is also understood most grain pool providers hold AFSL licences and provide pool product information and guidelines.

### **ASIC Consultation Process**

The current relief provided by ASIC is on the basis that the Schemes do not have a predominant investment character. Therefore, ASIC considers that the Schemes are not intended to be captured and regulated by the provisions of the Act that regulate managed investment schemes.

The Consultation Process ensures, from ASIC's perspective, that the continuing regulatory and financial impact of the Class Order and its effectiveness remains relevant. ASIC has invited submissions primarily based on whether or not the current Class Order is operating effectively and efficiently.

ASIC has formed the preliminary view that the Class Order is operating effectively and efficiently and will continue to form a useful part of legislative framework. Therefore, ASIC propose to continue the relief in substantially the same form as the current Class Order.

The closing date for submissions is 9 September 2016. It is expected that the commencement of a remade instrument will occur in December 2016.

### **Recommendations**

Members are encouraged to review the Consultation Process which is available on the ASIC website [www.asic.gov.au](http://www.asic.gov.au) (CP 266).

Members are welcome to provide feedback to GTA or to make their own submissions direct to ASIC.

Member submissions can be made by email to [submissions@graintrade.org.au](mailto:submissions@graintrade.org.au)

Please note, Member submissions are generally published on the GTA website, unless specifically requested to be withheld from publication.

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