

ASIC CLASS ORDER [CO 06/709]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Subsections 341(1), 741(1), 992B(1) and 1020F(1) – Variations and Revocations

Subsections 341(1) of the *Corporations Act 2001* (the Act) provides that the Australian Securities and Investments Commission (ASIC) may make an order in respect of a specified class of companies, registered schemes or disclosing entities that relieves the entities in question, their directors and/or auditors from specified requirements of Parts 2M.2, 2M.3 or 2M.4 (other than Division 4) of the Act.

Subsection 992B(1) of the Act provides that ASIC may make an order exempting a person or class of persons (or a financial product or class of financial products) from a provision of Part 7.8 of the Act (other provisions relating to the conduct etc connected with financial products and financial services, other than financial product disclosure) or declare that Part 7.8 applies as if specified provisions were omitted, modified or varied as specified in the declaration.

Subsections 741(1) and 1020F(1) of the Act provide that ASIC may make an order exempting a person from a provision of Chapter 6D (fundraising) or Part 7.9 (financial product disclosure and other provisions relating to issue, sale and purchase of financial products) of the Act or declare that the Chapter 6D or Part 7.9 applies as if specified provisions were omitted, modified or varied as specified in the declaration.

1. Background – amendments to ASIC Class Order [CO 98/100] “Rounding in financial reports and directors’ reports”

ASIC Class Order [CO 98/100] “Rounding in financial reports and directors’ reports” under s.341(1) permits the rounding of amounts in financial reports and directors' reports prepared under Chapter 2M of the Act. The order also contains restrictions on the extent to which certain information can be rounded, such as remuneration of directors, executive officers and auditors.

Following amendments made on 24 January 2006 by Class Order [06/51], there was a minor cross referencing error in Class Order [CO 98/100].

2. Background - amendments to Class Order [CO 01/1455] “Continuously quoted securities”

The Act permits a disclosing entity to issue a prospectus or Product Disclosure Statement (PDS) with a specified limited content (“transaction-specific disclosure”) for continuously quoted securities: ss.713 and 1013FA. Transaction-specific disclosure is predicated on the fact that such entities are subject to the continuous disclosure requirements of the Act and that the market generally should have all information necessary to reach an informed view about those securities.

Section 9 of the Act defines “continuously quoted securities” and excludes the securities of an entity where that entity, its directors or auditor have taken advantage of relief under ss.340 or 341 from the financial reporting and audit requirements of Chapter 2M in the 12 months before the date of the prospectus or PDS. Hence, an entity is not permitted to use transaction-specific disclosures where the entity, its directors or auditor have taken advantage of relief under ss.340 or 341.

Class Order [CO 01/1455] “Continuously quoted securities” allows an entity to use transaction-specific disclosures even where the entity, its directors and/or auditor has taken advantage of certain ASIC relief under ss.340 or 341 that:

- (a) is minor and technical; or
- (b) otherwise does not detract from the level of information available to the market.

On 24 January 2006, ASIC made Class Order [CO 06/51] which included a minor and technical amendment to Class Order [CO 98/1418] “Wholly-owned entities” under s.341(1). The amendment introduced a “Second Order” that provides relief to the holding entity in a closed group to make the disclosures specified under condition (i) of Class Order [CO 98/1418]. This facilitates increased information for users of the holding entity financial report, and [CO 01/1455] now needs a minor amendment in order to permit the holding entity to use transaction-specific disclosure.

3. Background - amendments to Class Order [CO 04/672] “Extension of on-sales exemptions”

The Act requires an entity to issue a prospectus or PDS where the entity is on-selling a financial product within 12 months of that product being issued and:

- (a) there was no disclosure at the time of issue; and
- (b) certain other criteria are satisfied as outlined in ss.707(3) and 1012C(6).

There are a number of exemptions to the requirements in ss.707(3) and 1012C(6). In particular, ss.708A(5) and 1012DA(5), the “on-sale exemptions”, recognise that a prospectus or PDS need not accompany the on-sale of a financial product that is quoted on an Australian financial market provided, amongst other things, the on-selling entity, its directors and auditor are not relying on any relief granted in the 12 months prior to the issue of the product under ss.340 or 341.

Class Order [CO 04/672] “Extension of on-sales exemptions” allows an entity to rely on the on-sale exemptions even where the entity, its directors and/or auditor has taken advantage of certain ASIC relief under ss.340 or 341 that:

- (a) is minor and technical; or
- (b) otherwise does not detract from the level of information available to the market.

As stated above, ASIC amended Class Order [CO 98/1418] pursuant to s.341(1) on 24 January 2006. This facilitates increased information in a holding entity’s financial report. As a result, [CO 04/672] now needs a minor amendment in order to permit a holding entity to rely on the on-sale exemptions despite having relied on the technical relief provided by Class Order [CO 98/1418].

4. Class Order [CO 06/709] “Variation and revocation of financial reporting class orders”

Class Order [CO 06/709] “Variation and revocation of financial reporting class orders”:

- (a) varies [CO 98/0100] to correct the cross referencing error mentioned above;
- (b) varies [CO 01/1455] to permit an entity that has taken advantage of the relief under the Second Order of Class Order [CO 98/1418] to rely on transaction specific disclosure;
- (c) varies [CO 04/672] to permit an entity that has taken advantage of the relief under the Second Order of Class Order [CO 98/1418] to take advantage of disclosure exemptions for secondary sales of securities and financial products; and
- (d) revokes spent Class Orders [CO 98/1867], [CO 98/1868], [CO 98/1869], [CO 98/1870], [CO 98/1871], [CO 98/1999], [CO 98/2000], [CO 98/2001] and [CO 98/2002] which provided relief in connection with auditor independence requirements of the Act that were replaced in 2004 and removes the reference to those orders from Class Orders [CO 01/1455] and [04/672].

5. Consultation

As [CO 06/709] is of a minor or machinery nature and does not substantially alter existing arrangements, ASIC did not undertake any consultation with stakeholders before that class order was made.