

ASIC CLASS ORDER [CO 13/1050]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 13/1050] under subsection 341(1) of the *Corporations Act 2001* (the Act).

Subsection 341(1) provides that 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.

1. Background

Accounting Standard AASB 10 *Consolidated Financial Statements* (“AASB 10”) applies for reporting periods beginning on or after 1 January 2013, which typically includes half-years ended 30 June 2013. AASB 10 also applies for entities early adopting the standard for full years ended 30 June 2013. AASB 10 replaces accounting standard AASB 127 *Consolidated and Separate Financial Statements* and Interpretation 112 *Consolidation – Special Purpose Entities*.

AASB 10 requires an entity that controls one or more other entities to present consolidated financial statements. For the purposes of AASB 10, an investor controls an investee if and only if the investor has all of the following:

- (a) power over the investee;
- (b) exposure, or rights, to variable returns from its involvement with the investee; and
- (c) the ability to use its power over the investee to affect the amount of the investor’s returns.

The terms “investor” and “investee” are not defined in AASB 10, nor in any other accounting standard. In applying AASB 10 questions arise as to whether an investor must have an ownership or other financial interest in an investee to give it power or exposure or rights to variable returns.

In a stapling arrangement, it might not be possible under AASB 10 for one stapled entity to consolidate other stapled entities for one or more of the following reasons:

- (a) none of the stapled entities typically has an ownership or other financial interest in any of the other stapled entities;
- (b) none of the stapled entities may have power over the other stapled entities, particularly where a third party manages all of the entities;
- (c) there may be no variable returns between the stapled entities; and

- (d) if a stapled entity meets the definition of “investment entity” in AASB 10 it may not be able to prepare consolidated financial statements that cover the other stapled entities.

As a trustee/manager does not normally control a managed investment scheme under AASB 10 in the absence of an ownership or other financial interest, it may be unclear as to why control would exist merely because the two entities are stapled.

In previous reporting periods, stapled entities presented combined financial statements or consolidated financial statements covering all of the stapled entities in a stapled group.

It is likely to be useful to investors in stapled entities to be provided with combined financial statements or consolidated financial statements covering all of the stapled security issuers in a stapled group. Where there are financial interrelationships between the entities, combined financial statements or consolidated financial statements may be necessary to meet the true and fair view requirement in Chapter 2M of the Act.

ASIC Class Order [CO 05/642] “Combining financial reports of stapled security issuers” allows the stapled entities in a stapled group to present their respective financial statements together in a single financial report.

2. Purpose of the class order

Class Order [CO 13/1050] allows stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group for the half-year ended 30 June 2013 on the same basis used to prepare those combined financial statements or consolidated financial statements for the year ended 31 December 2012.

In these instances, Class Order [CO 13/1050] also allows the stapled entities relief similar to that previously provided by Class Order [CO 05/642]. The stapled entities in a stapled group will continue to be allowed to present their respective financial statements together in a single financial report.

3. Operation of the class order

Class Order [CO 13/1050] provides the relief outlined in Section 2 of this Explanatory Statement. Class Order [CO 13/1050] outlines the circumstances in which the relief is available but contains no conditions.

4. Consultation

Class Order [CO 13/1050] is minor and machinery. It only applies to a small number of entities reporting under AASB 10 for the half-year ended 30 June 2013. Class Order [CO 13/1050] allows stapled entities to continue their previous basis of reporting and provide information useful to their investors. Accordingly, ASIC did not undertake any consultation with stakeholders before that class order was made.

ASIC intends to consult on the method of reporting for groups of stapled entities for reporting periods ending on or after 31 December 2013.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the class order

Class Order [CO 13/1050] allows stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group for the half-year ended 30 June 2013 on the same basis used to prepare those combined financial statements or consolidated financial statements for the year ended 31 December 2012.

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Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.