

ASIC CLASS ORDER (CO 07/569)

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes Class Order (CO 07/569) *Revocation of Class Order (CO 05/21)* under s992B(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 992B(1)(c) provides that ASIC may declare that Part 7.8 of the Act applies in relation to a person or a financial product, or class of persons or financial products as if specified provisions of that Part were omitted, modified or varied as specified in the declaration.

1. Background

The *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* (SRS Act) introduced a number of amendments to the Act. These included, in relation to s990A of the Act, the repeal of that section with effect from 28 June 2007, and the substitution of a new s990A containing the words, ‘Sections 990B to 990H do not apply to a financial services licensee that is a public company’.

Before this substitution, s990A applied where, among other things, a financial services licensee was ‘a body corporate to which section 327 applie[d]’. When first inserted, this provision had the effect of ensuring that a financial services licensee who was required to appoint an auditor under Chapter 2M of the Act did not also need to comply with s990B – 990H of the Act, which relate to the appointment, removal or resignation of auditors under Part 7.8 of the Act.

However, s327 of the Act was subsequently repealed, with effect from 1 July 2004, by the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (the CLERP 9 Act). It was replaced by Subdiv A of Div 6 of Part 2M.4 of the Act, which now deals with the appointment of auditors. This meant that, from 1 July 2004, s990A referred to a section of the Act that no longer existed.

Class Order (CO 05/21) *Clarification of requirement for the appointment of auditors by financial services licensees* was first issued on 14 January 2005. It was made to overcome the anomaly in the operation of s990A, by ensuring that this section operated as if the reference to ‘a body corporate to which section 327 applie[d]’ were a reference to the provisions that replaced s327 of the Act.

The substitution in the wording of s990A introduced by the SRS Act has now removed any uncertainty in relation to the requirement for the appointment of

auditors by financial services licensees, by removing any reference to repealed s327, and specifying that s990B – 990H do not apply to public companies.

2. Purpose of the class order

The purpose of CO 07/569 is to revoke CO 05/21.

Now that the SRS Act has removed the legislative anomaly that CO 05/21 addressed, CO 05/21 can have no further operation, and is no longer necessary.

3. Operation of the class order

CO 07/569 revokes CO 05/21.

4. Consultation

ASIC did not undertake any specific consultation with other stakeholders before CO 07/569 was made, as it is of a minor and machinery nature.