

# ASIC CLASS ORDER [CO 11/943]

## 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 11/943] under subsection 601YAA(1) of the *Corporations Act 2001* (the **Act**).

Section 601YAA provides that ASIC may declare that Chapter 5D of the Act (including the transitional provisions set out in Division 2 of Part 10.12 of the Act) applies to a person or class of persons as if specified provisions were omitted, modified or varied as specified in the declaration.

### 1. Background

Chapter 5D of the Act implements the transfer of certain regulatory responsibilities from the States and Territories to the Commonwealth in relation to trustee companies that provide “traditional trustee company services”, including performing estate management functions, preparing wills, applying for probate of a will and establishing and operating common funds.

The Chapter created a national licensing system for trustee companies, since they are required to hold an Australian financial services licence covering the provision of these traditional trustee company services. The trustee companies to which Chapter 5D applies are those companies listed in Schedule 8AA to the *Corporations Regulations 2001* (the **Corporations Regulations**).

Some of these trustee companies do not hold an Australian financial services licence. These trustee companies have the benefit of certain transitional arrangements set out in regulation 5 of the *Corporations Amendment Regulations 2010* (No. 3).

Under the transitional arrangements, these trustee companies are deemed to have a licence authorising them to provide traditional trustee company services until the end of 30 April 2011. Further, until the end of that day, these trustee companies are granted exemptions from the requirement in section 601TAB of the Act to disclose changes to fees in relation to the provision of traditional trustee company services, and from the requirements in Part 7.7 of the Act, which deal with financial services disclosures.

These transitional arrangements were extended to the end of 30 June 2011 by ASIC Class Order [CO 11/407]. This Class Order was varied by ASIC Class Order [CO 11/557] to extend the transitional period to the end of 30 September 2011.

## **2. Purpose of the class order**

The purpose of this class order is to amend [CO 11/407] to further extend the transitional arrangements pending the making of regulations to amend the Corporations Regulations. The proposed amending regulations will extend the transitional period until 31 December 2012.

The Department of the Treasury have informed ASIC that they may be unable to implement the amending regulations before the expiration of the current transitional period as extended by [CO 11/407] (the end of 30 September 2011) and have requested ASIC to implement measures to ensure the transitional arrangements continue to apply until such time as amending regulations can be made.

This class order extends the transitional period to the end of 7 December 2011, at which point the amending regulations will take effect and this class order will cease to have effect. It is required to ensure that trustee companies that are operating under the current transitional arrangements may continue to do so without breaching the Act in this interim period between 1 May 2011 and 7 December 2011.

## **3. Operation of the class order**

This class order amends notional section 1495A of the Act by extending the operation of the transitional arrangements to the end of 7 December 2011.

## **4. Consultation**

ASIC consulted with the Department of the Treasury before making this class order. The Department of the Treasury consented to the making of this class order.