

ASIC CLASS ORDER [CO 13/1644]

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 13/1644] 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. 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.

Before being amended by Class Order [13/1644], Class Order [CO 13/1050] allowed stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group for financial years or half-years ended 30 June 2013 on the same basis used to present those combined financial statements or consolidated financial statements for the financial year or half-year ended 31 December 2012.

2. Purpose of the amendments

Class Order [CO 13/1644] amends Class Order [CO 13/1050] to extend the relief it provides in relation to the financial year or half-year ending on 30 June 2013 to subsequent financial years and half-years. The amendments also allow a stapled group which has not previously prepared a financial report under Chapter 2M of the Act to present consolidated financial statements pursuant to Class Order [CO 13/1050].

Finally, Class Order [CO 13/1644] amends Class Order [CO 13/1050] so that an entity that relies on the relief in Class Order [CO 13/1050] must disclose in the financial report:

- (a) whether consolidated financial statements or combined financial statements have been presented in accordance with Class Order [CO 13/1050]; and
- (b) the amounts attributed to non-controlling interests that are attributable to the stapled security holders.

3. Operation of the class order

Class Order [CO 13/1644] amends Class Order [CO 13/1050] as outlined in Section 2 of this Explanatory Statement. The amended Class Order [CO 13/1050] outlines the circumstances in which the relief is available.

4. Consultation

Class Order [CO 13/1644] is minor and machinery. It only applies to a small number of stapled entities reporting under AASB 10 for financial years or half-years ending after 30 June 2013. As amended, Class Order [CO 13/1050] allows stapled entities to continue their previous basis of reporting and provide information useful to their investors.

ASIC consulted with stakeholders on the method of reporting for groups of stapled entities through the issue of Consultation Paper 217 *Presentation of financial statements by stapled entities* in October 2013. Continuation of the relief provided by Class Order [CO 13/1050] reflects the feedback from the majority of stakeholders who responded to the consultation paper.

ASIC is aware that the issue of presentation of financial statements by stapled entities may be considered by the IFRS Interpretations Committee in 2014. ASIC will continue to monitor developments on that issue and respond as necessary to any decisions made. This may result in relief continuing on a different basis.

Statement of Compatibility with Human Rights

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

ASIC Class Order [CO 13/1644]

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] previously allowed stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group for financial years or half-years ending on 30 June 2013.

Class Order [CO 13/1644] extends the relief provided in Class Order [CO 13/1050] to allow consolidated financial statements or combined financial statements to be prepared for subsequent financial years and half-years. It also allows consolidated financial statements to be presented by a stapled group which has not previously prepared a financial report under Chapter 2M of the *Corporations Act 2001*.

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.