

ASIC CLASS ORDER [CO 06/51]

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 Revocation

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 are restrictions on the extent to which certain information can be rounded, such as remuneration of directors, executive officers and auditors.

Rounding of remuneration disclosures

Accounting standard AASB 1046 “Director and Executive Disclosures by Disclosing Entities” (AASB 1046) required the disclosure of information on the remuneration of directors and executives and [CO 98/100] included restrictions on the rounding of amounts disclosed in accordance with that standard.

On 20 December 2005, the Australian Accounting Standards Board (AASB) issued a new accounting standard dealing with disclosure of director and executive remuneration and transactions by disclosing entities. The new AASB 124 “Related Party Disclosures” (the new AASB 124) replaced AASB 1046. The new AASB 124 applies for years ending on or after 31 December 2005.

Because [CO 98/100] specifically referred to AASB 1046, the replacement of AASB 1046 with the new AASB 124 caused restrictions on rounding in relation to the director and executive remuneration disclosures in accounting standards to be ineffective.

The order permits the rounding of amounts to the nearest \$100,000 for some entities, with lower levels of rounding specified for remuneration information required by AASB 1046. If the references to AASB 1046 weren't replaced with references to the corresponding provisions of the new AASB 124, some remuneration information would be rounded to zero and not disclosed, despite being deemed material by nature under the accounting standards.

Rounding by Australian Financial Services licensees

The rounding relief under [CO 98/100] only applied to financial reports and directors' reports required by Chapter 2M of the Act. It does not apply to financial reports required to be lodged by Australian Financial Services licensees (AFS licensees) under Chapter 7 of the Act.

The financial reporting requirements under Chapter 2M and Chapter 7 include requirements to comply with the same body of accounting standards, and many licensees lodge the same financial reports under both Chapter 2M and Chapter 7. In the absence, of an exemption under s.992B(1), an AFS licensee reporting under both Chapter 2M and Chapter 7 would either need to provide information to the cent in their financial reports under Chapter 2M or lodge different reports under each chapter.

The levels of rounding permitted in [CO 98/100] are designed to ensure that there is no loss of information that is useful to users of the financial reports.

2. Background – amendments to ASIC Class Orders [CO 98/1417] “Audit relief for proprietary companies” and [CO 98/1418] “Wholly-owned entities”

Class Order [CO 06/51] includes some minor changes to Class Order [CO 98/1417] “Audit relief for proprietary companies” and Class Order [CO 98/1418] “Wholly-owned entities” under s.341(1).

Subject to certain requirements, [CO 98/1417] gives relief to the following companies from the audit obligations in Chapter 2M of the Act:

- (a) large proprietary companies; and
- (b) small proprietary companies which are controlled by foreign companies.

[CO 98/1417] required some minor changes to reflect the impact of the adoption of new accounting standards for years commencing on or after 1 January 2005, and to clarify a condition that the financial report and directors' report for the prior year be lodged on time.

[CO 98/1418] provides relief to certain wholly-owned companies whose holding entity is a company or a registered foreign company. It provides relief from the requirements of Chapter 2M of the Act to prepare and lodge a financial report, directors' report and auditor's report. The relief is subject to certain conditions, including a requirement that the holding entity and the wholly-owned subsidiary be parties to a deed of cross guarantee and that the holding entity lodges consolidated financial reports.

[CO 98/1418] required some minor changes to allow holding entities to have the intended benefit of relief under Class Order [CO 05/637] “Additional month for first financial reports under AIFRS” (where applicable), and address some other minor matters.

3. 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 06/50] “Transfer of remuneration information into directors’ report” under s.341(1) to continue relief previously provided by the Corporations Regulations. The regulations were made ineffective by a restructuring of the accounting standards to which they referred. The class order allows the relocation of information concerning the remuneration of directors and executives from the financial report to the directors’ report, without reducing the amount of information available to the market, including maintaining a requirement for the audit of the transferred information.

4. 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 Class Order [CO 06/50] does not reduce the amount increase the information available in financial reports and ensure that certain financial reporting requirements of the legislation operate in an effective manner.

As a result, [CO 04/672] now needs a minor amendment in order to permit an entity to rely on the on-sale exemptions despite its auditor having relied on the technical relief provided by [CO 06/50].

5. Background – revocation of Class Order [CO 05/640] “ADIs – related party transactions and balances”

Class Order [CO 05/640] “ADIs – related party transactions and balances” under s.341(1) relieved ADIs, their parent entities and controlled entities from the requirement of accounting standard AASB 1046 to disclose in their financial report regularly made balances and transactions involving the bank and persons other than directors and specified executives of the entity, their close family members, and the entities they control or significantly influence.

Following the replacement of AASB 1046 with the new AASB 124, [CO 05/640] is no longer necessary. Unlike AASB 1046, the new AASB 124 does not require the disclosure of information on transactions and balances concerning relatives of directors and executives who are not close family members.

6. Class Order [05/637] “Additional month for first financial reports under AIFRS”

Class Order [CO 05/637] “Additional month for first financial reports under AIFRS” Applies to the first financial reports prepared under the Australian equivalents of International Financial Reporting Standards (AIFRS) by most unlisted entities and individuals. [CO 05/637] allows an additional month for those entities and individuals to distribute those financial reports to members and to lodge those financial reports with ASIC.

The relief applies to financial reports under both Chapter 2M and Chapter 7 of the Corporations Act and for half-years and financial years commencing from 1 January 2005 to 31 December 2005 inclusive.

The order contained a minor error in referring to the relevant provisions of s.315 of the Act.

7. Class Order [CO 06/51] “Variation and revocation of financial reporting class orders”

Class Order [CO 06/51] “Variation and revocation of financial reporting class orders”:

- (a) varies [CO 98/0100] to:
 - (i) refer to the requirements of the new AASB 124 and continue the level of rounding for director and executive related disclosures; and
 - (ii) apply to the financial reports of AFS licensees under Chapter 7 of the Act;
- (b) makes minor variations to [CO 98/1417] and [CO 98/1418] as discussed in section 2 above;
- (c) varies [CO 01/1455] to permit an entity that has taken advantage of the relief under Class Order [CO 06/50] to rely on transaction specific disclosure;
- (d) varies [CO 04/672] to permit an entity that has taken advantage of the relief under Class Order [CO 06/50] to take advantage of disclosure exemptions for secondary sales of securities and financial products;
- (e) varies [CO 05/637] to correct a minor referencing error; and
- (f) revokes [CO 05/640] as it is no longer needed.

8. Consultation

As [CO 06/51] 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.