

ASIC CLASS ORDER [CO 08/11]

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 08/11] under section 341 of the *Corporations Act 2001* (the *Act*).

Section 341 provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the following persons from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act:

- (a) directors;
- (b) the companies, registered schemes or disclosing entities themselves;
- (c) auditors of the companies, registered schemes or disclosing entities.

1. Background

Part 2M.3 of the Act requires disclosing entities to prepare and lodge audited financial reports for each half-year and each financial year.

ASIC already provides certain wholly-owned subsidiaries with relief from the requirement to prepare half-year and annual financial reports under ASIC Class Order [98/1418] *Wholly-owned entities*. The relief provided by [CO 98/1418] is subject to a number of requirements.

2. Purpose of the class order

The purpose of ASIC Class Order [CO 08/11] is to change a number of the requirements for relief under [CO 98/1418]. The changes will enable more companies to rely on the relief and reduce the administrative work for group companies.

3. Operation of the class order

The main changes to [CO 98/1418] effected by [CO 08/11] are:

- (i) removal of the requirement for a three year compliance history with the financial reporting requirements of the *Corporations Act 2001* (the Act);
- (ii) replacement of the requirement to lodge an annual notice concerning use of the class order with a requirement to lodge a notice when the relief is first applied or the group holding entity changes, and another notice when the company ceases to apply the relief;
- (iii) reduction of the matters which must be addressed in the certificate required under [CO 98/1418];

(iv) removal of the requirement for a statutory declaration when first entering into a deed of cross guarantee; and

(v) removal of the requirement to lodge solvency statements by directors and simplification of the signing requirements for those statements.

4. Consultation

ASIC received submissions from Chartered Secretaries Australia (CSA). CSA supports the reduction of requirements attached to [CO 98/1418], including the removal of the requirement for a three year compliance history with financial reporting requirements.

ASIC did not consult with other outside parties as the relief in the class order is considered to be of a minor or machinery nature.