

**Australian Securities and Investments Commission  
Corporations Act 2001 — Subsection 341(1) — Variation**

**Enabling legislation**

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under subsection 341(1) of the *Corporations Act 2001*.

**Title**

2. This instrument is ASIC Class Order [CO 08/11].

**Commencement**

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

**Variation**

4. ASIC Class Order [CO 98/1418] is varied as follows:

- (a) omit paragraph (k) (including the heading), substitute:

*“Opt-in and opt-out notices by the Entity*

- (k) Unless:

- (i) the Entity took advantage of the relief available under this order in respect of the financial year immediately preceding the Relevant Financial Year; and
- (ii) the Holding Entity of the Entity is the same for the Relevant Financial Year and the financial year immediately preceding it,

a notice signed by a director or secretary is lodged with ASIC using Form 389:

- (iii) within 4 months after the end of the Relevant Financial Year;  
or
- (iv) such other time as is approved in writing by ASIC,

containing a statement that the Entity has taken advantage of relief under this order together with the identity of the Holding Entity;

- (ka) If the relief available under this order is not taken advantage of in respect of a financial year (the *first non-reliance year*) immediately following a financial year in which relief was taken advantage of then, unless the Entity lodges an annual financial report prepared under Chapter 2M of the Act for the first non-reliance year, a notice that the Entity has ceased to take advantage of the relief signed by a director or secretary is lodged with ASIC using Form 399:
- (i) within 4 months after the end of the first non-reliance year; or
  - (ii) such other time as is approved in writing by ASIC;

*Annual resolution*

- (kb) At or about the time of the Entity's balance date for the Relevant Financial Year the directors reassess the advantages and disadvantages associated with the Entity remaining a party to the Deed of Cross Guarantee and taking advantage of the relief afforded by this order and the directors resolve either that the Entity should continue to remain a party to the Deed of Cross Guarantee, or seek to revoke the Deed of Cross Guarantee, as the case may be;"; and
- (b) in subparagraph (l)(iii) after "Deed" (third occurring), insert "of Cross Guarantee"; and
  - (c) in subparagraph (o)(i) omit "The Entity has provided ASIC with a statement of the directors of the Entity signed by at least 2 directors (one director if the Entity had only one director)", substitute "The directors of the Entity have made a statement, signed by at least 1 director,"; and
  - (d) omit subparagraphs (o)(iii) and (iv); and
  - (e) in subparagraph (o)(v):
    - (i) omit "Every", substitute "In respect of every"; and
    - (ii) omit "has provided ASIC (before the end of the financial year in which it became a party to that Deed of Cross Guarantee) a statement of the directors of that Other Entity signed by at least 2 directors (one director if the Other Entity had only one director)", substitute "the directors of that Other Entity have made a statement, signed by at least 1 director, and made before the end of the financial year in which it became a party to the Deed of Cross Guarantee,"; and
  - (f) omit paragraph (p) (including the heading); and

- (g) omit paragraph (w) (including the heading), substitute:

*“Entities excluded from relying on this order*

- (w) ASIC has:
- (i) not notified the Entity in writing that it may not rely on this order or may not rely on this order for the Relevant Financial Year; or
  - (ii) notified the Entity in writing that it may not rely on this order or may not rely on this order for the Relevant Financial Year but has subsequently revoked or varied that notice so that it does not cover the Relevant Financial Year.”; and

- (h) omit the text of the “SCHEDULE”, substitute:

“For reporting periods commencing on or after 1 January 2009 and where the version of accounting standard AASB 101 “Presentation of Financial Statements” (“AASB 101”) dated September 2007 has not been adopted early by the Holding Entity for the Relevant Financial Year, the following information for the Relevant Financial Year with comparative information for the immediately preceding financial year:

- (i) An Income Statement setting out the information specified by paragraphs 81 to 85 of accounting standard AASB 101 “Presentation of Financial Statements” issued in July 2004 (as applicable to the financial statements of the Holding Entity for the Relevant Financial Year) (“old AASB 101”);
- (ii) Opening and closing retained earnings, dividends provided for or paid, and transfers to and from reserves; and
- (iii) A Balance Sheet complying with paragraphs 68 to 73 of old AASB 101.

In any other case, the following information for the Relevant Financial Year with comparative information for the immediately preceding financial year:

- (i) A Statement of Comprehensive Income setting out the information specified by paragraphs 82 to 87 of AASB 101 and, where paragraph 84 of AASB 101 is applied, an Income Statement;
- (ii) Opening and closing retained earnings, dividends provided for or paid, and transfers to and from reserves; and
- (iii) A Statement of Financial Position complying with paragraphs 54 to 59 of AASB 101.”; and

- (i) under the heading “**Interpretation**”:
  - (i) in the definition of “Certificate”:
    - (A) in paragraph (b) omit “company;”, substitute “company; and”; and
    - (B) omit paragraphs (c) and (d); and
    - (C) in paragraph (e) omit “certificate; and”, substitute “certificate.”; and
    - (D) omit paragraph (f); and
  - (ii) in the definition of “previous order” omit “1996;”, substitute “1996; and”; and
  - (iii) omit the definition of “substantially satisfied”; and
- (j) omit the text of the “**Second order**”, substitute:
 

“And under subsection 341(1) of the Act ASIC relieves a company that is a Holding Entity for the purposes of the first order from the requirement to comply with subsections 295(2) and (3) of the Act to the extent they would prevent:

  - (a) the inclusion of Consolidated Financial Statements (for the purposes of paragraph (f) of the first order) where the consolidated group is not a reporting entity for the purposes of accounting standards under subsection 296(1) of the Act; or
  - (b) the notes to the Consolidated Financial Statements (within the meaning of the first order) from including the information specified in paragraph (i) of the first order.”.

Dated this 19th day of March 2008

Signed by Brendan Byrne  
as a delegate of the Australian Securities and Investments Commission