

ASIC CLASS ORDER [CO 08/618]**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 08/618] under s.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

ASIC Class Order [CO 98/1418] “Wholly-owned entities” under s.341(1) relieves wholly-owned subsidiaries from the requirement to prepare financial reports and directors’ reports under Chapter 2M of the Act where those subsidiaries enter into a deed of cross guarantee with their holding entity. Conditions for relief include preparation of consolidated financial statements by the holding entity.

2. Purpose of the class order

Three minor issues have been identified in relation to the operation of [CO 98/1418]:

- (a) [CO 98/1418] requires asset values in the holding entity’s consolidated financial statements that may be inconsistent with the values required under the Act.

Condition (h)(i) of [CO 98/1418] requires the holding entity’s consolidated financial statements to show asset values no greater than those that would appear in the financial reports of the subsidiaries. That condition does not allow for adjustments made to asset values on consolidation in accordance with the requirements of the accounting standards that apply to holding entity reports under Chapter 2M of the Act. For example, where the holding entity has acquired a pre-existing company, the accounting standards require the assets of the newly acquired company to be shown at fair values in the consolidated financial statements, even though the assets may remain at depreciated cost to the subsidiary in the subsidiary’s own financial report. This is an unintended consequence.

Condition (h)(i) is no longer necessary in light of changes in accounting standards in recent years. Accounting standards contain new impairment tests for assets in both single entity and consolidated financial statements.

- (b) [CO 98/1418] does not allow for the possibility of new trustee being substituted for the trustee under the deed.

Relief is not available under [CO 98/1418] where a deed of cross guarantee is changed in a manner other than specified in condition (s) of that class order. ASIC's pro forma deed of cross guarantee (ASIC Pro Forma 24) requires a trustee to be appointed to act in the interests of creditors. Clause 7.5 of that pro forma deed specifically allows for deeds to be varied to substitute one trustee for another. However, the substitution of a trustee specified in the deed for another trustee is not an allowable deed change under condition (s). This is an unintended consequence.

- (c) [CO 98/1418] could provide greater clarity as to when comparative information is to be presented in the additional disclosure required in the holding entity's consolidated financial statements.

Condition (i) of [CO 98/1418] requires certain financial information to be presented in the notes to the consolidated financial statements of the holding entity. The information is specified in the condition and in the Schedule to the order and includes a requirement for comparative information for the previous year. Greater clarity could be provided as to whether comparative information is required where the holding entity was not a party to a deed of cross guarantee in the previous year.

3. Operation of the class order

Class Order [CO 08/618] "Variation to wholly-owned entities class order" varies [CO 98/1418] by:

- (a) removing condition (h)(i) so that asset values in the holding entity's consolidated financial statements are determined in accordance with accounting standards;
- (b) allowing for the substitution of one trustee for another trustee under condition (s) as contemplated by the pro forma deed of cross guarantee; and
- (c) providing greater clarity as to when comparative information is required in note disclosures required for the holding entity's consolidated financial statements.

4. Consultation

As [CO 08/618] 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.