

ASIC CLASS ORDER [CO 09/626]

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 09/626] 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

Class Order [CO 09/626] varies Class Orders [CO 98/98] and [CO 98/1418].

[CO 98/98] provide relief to foreign-controlled small proprietary companies which are not part of a “large group” (as defined in the principal class order) from the requirement under paragraph 292(2)(b) of the Act to prepare and lodge audited financial reports and directors’ reports with ASIC. [CO 98/1418] provides the same relief to wholly-owned entities.

Both [CO 98/98] and [CO 98/1418] require companies to lodge opt-in notices with ASIC for the first financial year in which they apply relief available under the class orders. In certain circumstances, the class orders also require opt-out notices to be lodged with ASIC after the end of the first financial year companies cease to rely on relief in the orders.

2. Purpose of the class order

[CO 09/626] varies the terms of [CO 98/98] to give companies a longer period of time in which to lodge an opt-in or opt-out notice and to remove the discretion for ASIC to grant an extension of time to lodge an opt in notice. [CO 09/626] varies the terms of [CO 98/1418] to remove the discretion for ASIC to grant extensions of time to lodge an opt-in notice.

3. Operation of the class order

Previously companies were required under the terms of [CO 98/98] to lodge an opt-in notice with ASIC within the 3 month period immediately before the start of the first financial year of any period they intended to take advantage of relief under the class order. An opt-out notice was required to be lodged, when necessary, within a period of

4 months after the end of the first financial year companies ceased to rely on relief in the order.

Now companies relying on [CO 98/98] will be able to lodge an opt-in notice at any time during a 19 month period commencing 3 months before the start of the first financial year a company intends to rely on relief, and ending 4 months after the end of the financial year. Similarly, opt-out notices may be lodged in the period commencing 3 months before the start of the first financial year in which the company has ceased to rely on the relief, and ending 4 months after the end of the financial year.

As the last date for lodging an opt-in notice under the new arrangements for [CO 98/98] and the existing arrangements under [CO 98/1418] coincide with the deadline for lodging a financial report for the first financial year a company intends to rely on the relief, there is no scope for a further extension to the period to lodge the notice. Accordingly, ASIC's discretion to extend the period has been removed from the class orders.

4. Consultation

ASIC did not engage in consultation with external parties about the variations in [CO 09/626] as the changes made to [CO 98/98] and [CO 98/1418] are considered minor or machinery in nature. The changes provide more time for companies relying on [CO 98/98] to provide opt-in and opt out notices to ASIC without affecting the quality of publicly available information. They also remove the discretions in [CO 98/98] and [CO 98/1418] to extend the time to lodge opt-in notices, because there is no scope to do so.