

## ASIC CLASS ORDER [CO 11/140]

### 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 11/140] under subsections 741(1) and 1020F(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.

Subsection 741(1) provides that ASIC may declare that Chapter 6D applies to a person as if specified provisions (including definitions as they apply to references in that Chapter) were omitted, modified or varied as specified in the declaration.

Subsection 1020F(1) provides that ASIC may declare that Part 7.9 applies in relation to a person as if specified provisions (including definitions as they apply to references in that Part) were omitted, modified or varied as specified in the declaration.

#### 1. Background

##### *Parent entity financial reports*

The *Corporations Amendment (Corporate Reporting Reform) Act 2010* (“CRRA”) amended the Act so that those entities reporting under Chapter 2M that present consolidated financial statements are no longer required to present parent entity financial statements. This change applies for financial reports for the year ended 30 June 2010.

##### *Including different registered scheme financial reports in a single document*

Subsections 295(2) and 303(2) of the Act only allow financial reports to include those financial statements specified by the accounting standards. An entity’s financial report is not permitted to include the financial statements of another entity.

##### *Class Order [10/654]*

Class Order [CO 10/654] “Inclusion of parent entity financial statements in financial reports” allows companies, registered schemes and disclosing entities that present consolidated financial statements to include their own parent entity financial statements as part of their full year financial report or concise report under Chapter 2M of the Act.

##### *Class Order [CO 06/441]*

Class Order [CO 06/441] allows responsible entities to include the financial statements of related registered schemes that have a common responsible entity (or related responsible entities) in adjacent columns in a single financial report. The relief applies to full year financial reports, concise financial reports and half-year financial reports. The relief is subject to conditions.

### *Class Order [CO 01/1455]*

Sections 713 and 1013FA of the Act permit a disclosing entity to prepare a disclosure document or Product Disclosure Statement (PDS) with a specified limited content (“transaction-specific disclosure”) for continuously quoted securities. 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”. Securities and financial products will only satisfy the definition of “continuously quoted securities” where, among other things, no order covered the entity, its directors or auditor, during the shorter of the period during which the class of securities were quoted and the period of 12 months before the date of the prospectus or PDS.

Class Order [CO 01/1455] allows an entity to use transaction-specific disclosures even where the entity, its directors or auditor are covered by certain ASIC orders made under section 341 which give technical accounting and financial reporting relief and do not detract from the level of information available to the market.

### *Class Order [CO 04/672]*

The Act requires a person to prepare a disclosure document or PDS for an offer to sell securities or financial products where:

- (a) the offer is made within 12 months of issue;
- (b) there was no disclosure at the time of issue; and
- (c) certain other criteria set out in sections 707 and 1012C are satisfied.

A prospectus or PDS is not required for securities or financial products that are quoted and for which a “cleansing notice” under sections 708A and 1012DA has been lodged with the relevant operator of the financial market. This “cleansing notice” exemption is only available where, among other thing, no order under section 341 covered entity, its directors and auditor, at any time during the shorter of the period during which the class of securities or financial products were quoted and the period of 12 months before the day on which the relevant securities or products were issued.

Class Order [CO 04/672] allows an entity to rely on the “cleansing notice” exemption even where the entity, its directors or auditor are covered by certain ASIC orders made under section 341 which give technical accounting and financial reporting relief and do not detract from the level of information available to the market.

### *Class Order [CO 07/571]*

Section 708AA and 1012DAA of the Act permit an entity to make a rights issue of quoted securities and quoted financial products without a disclosure document or Product Disclosure Statement, provided certain requirements are satisfied.

One requirement is that no order under section 341 of the Act covered the entity, or any person as director or auditor of the entity, at any time during the shorter of the period during which the class of securities or financial products were quoted and the period of 12 months before the day on which offers under the rights issue are made.

Class Order [CO 07/571] ensures that orders made under section 341 of the Act which give technical accounting and financial reporting relief and do not detract from the level of information available to the market, are disregarded for the purposes of the disclosure exemption for rights issues.

## **2. Purpose of the Class Order**

The purpose of Class Order [11/140] is to allow entities that take advantage of [CO 10/654] or [CO 06/441] to use transaction specific disclosures and rely on the “cleansing notice” and rights issue disclosure exemptions.

## **3. Operation of the Class Order**

Class Order [11/140] “Variation to Class Orders [CO 01/1455], [CO 04/672] and [CO 07/571] makes the following changes:

- (a) varies [CO 01/1455] to allow entities that take advantage of [CO 06/441] or [CO 10/654] to use transaction specific disclosures; and
- (b) varies [CO 04/672] to allow entities that take advantage of [CO 06/441] or [CO 10/654] to rely on the “cleansing notice” exemptions; and
- (c) varies [CO 07/571] to allow entities that take advantage of [CO 06/441] or [CO 10/654] to rely on the rights issue disclosure exemptions.

## **4. Consultation**

Consultation was not made as [CO 11/140] is only minor or machinery in nature and does not substantially alter existing arrangements. ASIC did not undertake any consultation with stakeholders before that class order was made.