

ASIC CLASS ORDER [CO 13/1051]

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 13/1051] under subsections s 341(1), 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

Class Order [CO 13/1050]

Class Order [CO 13/1050] allows stapled entities which are disclosing entities to present combined financial statements or consolidated financial statements of the stapled group for the half-year ended 30 June 2013 on the same basis used to prepare those combined financial statements or consolidated financial statements for the year ended 31 December 2012.

Class Order [CO 13/1050] also allows the stapled entities relief similar to that previously provided by Class Order [CO 05/642]. The stapled entities in a stapled group will continue to be allowed to present their respective financial statements together in a single financial report.

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 98/1418]

Class Order [CO 98/1418] provides relief to wholly owned companies from the requirement to prepare financial reports where their holding company prepares consolidated financial statements, the companies enter into a deed of cross guarantee and certain other conditions are met.

2. Purpose of the class order

The purpose of Class Order [13/1051] is:

- (a) to allow stapled entities that report using minor and machinery relief under Class Order [CO 13/1050] to continue to issue a disclosure document or PDS with a specified limited content;
- (b) to allow stapled entities that report using minor and machinery relief under Class Order [CO 13/1051] to use transaction specific disclosures and rely on “cleansing notice” exemptions; and
- (c) to update [CO 98/1418] to include reference to the new accounting standard dealing with consolidated financial statements, in addition to the previous accounting standard which is currently referred to in that class order.

3. Operation of the class order

Class Order [13/1051] “Variation to Class Orders [04/672], [CO 01/1455] and [CO 98/1418] makes the following changes:

- (a) varies [CO 01/1455] to allow entities that take advantage of [CO 13/1051] to use transaction specific disclosures;
- (b) varies [CO 04/672] to allow entities that take advantage of [CO 13/1051] to rely on “cleansing notice” exemptions and remove reference to a revoked class order; and
- (c) varies [CO 98/1418] to refer to a new accounting standard on consolidated financial statements.

4. Consultation

As [CO 13/1051] 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.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Class Order [CO 13/1051]

This class order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the class order

Class Order [13/1051] amends ASIC Class Orders [CO 01/1455], [CO 04/672] and [CO 98/1418] to:

- (a) allow stapled entities that report using minor and machinery relief under Class Order [CO 13/1050] to continue to issue a disclosure document or PDS with a specified limited content;
- (b) allow stapled entities that report using minor and machinery relief under Class Order [CO 13/1051] to use transaction specific disclosures and rely on “cleansing notice” exemptions; and
- (c) update [CO 98/1418] to include reference to the new accounting standard dealing with consolidated financial statements, in addition to the previous accounting standard which is currently referred to in that class order.

Human rights implications

This class order does not engage any of the applicable rights or freedoms.

Conclusion

This class order is compatible with human rights as it does not raise any human rights issues.