

Australian Securities and Investments Commission
Corporations Act 2001 — Subsections 283GA(1), 341(1), 601QA(1), 601YAA(1), 741(1),
926A(2), 951B(1), 992B(1) and 1020F(1) and paragraph 911A(2)(l) — National
Consumer Credit Protection Act 2009 — Subsection 109(3) — Order, Declaration,
Exemption and Amendment

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under subsections 283GA(1), 341(1), 601QA(1), 601YAA(1), 741(1), 926A(2), 951B(1), 992B(1) and 1020F(1) and paragraph 911A(2)(l) of the *Corporations Act 2001* (the *Act*) and subsection 109(3) of the *National Consumer Credit Protection Act 2009* (the *NCCP Act*).

Title

2. This instrument is ASIC Class Order [CO 14/757].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) the date of its gazettal.

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/>.

Order – Chapter 2M

4. An affected entity is relieved from each requirement under or arising from Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act to the extent that:
 - (a) apart from this order, the entity would not comply with the requirement; and
 - (b) the non-compliance would result merely from any or all of the following:
 - (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (iii) a company being an affected audit company rather than an authorised audit company;
 - (iv) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Declaration – Chapter 5C

5. Chapter 5C of the Act applies to all persons as if section 601HG were modified or varied by inserting the following after subsection (12):
- “(13) For the purposes of this section (including for the purposes of determining whether a person is a lead auditor or a review auditor):
- (a) an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor; and
 - (b) an affected audit company (as defined in ASIC Class Order [CO 14/757]) is taken to be an authorised audit company.”.

Exemption – Chapter 5C

6. The responsible entity of a registered scheme does not have to comply with a requirement under or arising from Chapter 5C of the Act to the extent that:
- (a) apart from this exemption, the responsible entity would not comply with the requirement; and
 - (b) the non-compliance would result merely from any or all of the following occurring before commencement of this instrument:
 - (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (iii) a company being an affected audit company rather than an authorised audit company;
 - (iv) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Exemption – Chapter 5D

7. A licensed trustee company does not have to comply with a requirement under or arising from regulation 5D.2.08 of the *Corporations Regulations 2001* to the extent that:
- (a) apart from this exemption, the licensed trustee company would not comply with the requirement; and
 - (b) the non-compliance would result merely from either or both of the following:
 - (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor.

Declaration – Chapter 6D

8. Chapter 6D of the Act applies to all persons as if:

- (a) section 708AA of the Act were modified or varied by inserting after subsection (9):

“(9A) For the purposes of the statement referred to in subparagraph 708AA(7)(c)(i), the body is taken to have complied with the provisions of Chapter 2M as they apply to the body if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”; and

- (b) section 708A of the Act were modified or varied by inserting after subsection (8):

“(8A) For the purposes of the statement referred to in subparagraph 708A(6)(d)(i), the body is taken to have complied with the provisions of Chapter 2M as they apply to the body if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Exemption – Part 7.6

9. A financial services licensee does not have to comply with paragraph 912A(1)(b) of the Act to the extent that:

- (a) apart from this exemption, the licensee would not comply with paragraph 912A(1)(b); and

- (b) the non-compliance would result merely from any or all of the following:
- (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (iii) a company being an affected audit company rather than an authorised audit company;
 - (iv) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Declaration – Part 7.8

10. Part 7.8 of the Act applies in relation to a financial services licensee and an auditor as if the following were inserted after section 990L of the Act:

“990M Application to affected auditors and affected audit companies

- (1) For the purposes of this Part:
- (a) an affected auditor is taken to be a registered company auditor; and
 - (b) an affected audit company is taken to be an authorised audit company.

Note: Because of section 761H, a reference to this Part also includes a reference to regulations or other instruments made for the purposes of this Part.

- (2) If, immediately before the commencement date, a person:
- (a) was purporting to be appointed as auditor of the licensee; and
 - (b) was not auditor of the licensee merely because the person was:
 - (i) an affected auditor rather than a registered company auditor; or
 - (ii) an affected audit company rather than an authorised audit company;

then on the commencement date, the person is taken to be appointed as auditor of the licensee.

- (3) If, immediately before the commencement date, a firm:
- (a) was purporting to be appointed as auditor of the licensee; and
 - (b) was not auditor of the licensee merely because, at any time before the commencement date, one or more members of the

firm were affected auditors rather than registered company auditors;

then on the commencement date, each of the following is taken to be appointed as auditor of the licensee:

- (c) the firm; and
- (d) each person who is:
 - (i) a member of the firm; and
 - (ii) a registered company auditor or an affected auditor;

whether the person is resident in Australia or not at the commencement date.

- (4) If a person or firm is taken to be appointed as auditor of the licensee under this section, then the licensee does not need to lodge a notice under subsection 990B(6) in relation to the appointment under this section.

- (5) In this section:

affected audit company has the same meaning as in ASIC Class Order [CO 14/757].

affected auditor has the same meaning as in ASIC Class Order [CO 14/757].

commencement date means the date that ASIC Class Order [CO 14/757] commences.”.

Exemption – Part 7.8

- 11. A financial services licensee does not have to comply with a requirement under or arising from Part 7.8 of the Act to the extent that:
 - (a) apart from this exemption, the licensee would not comply with the requirement; and
 - (b) the non-compliance would result merely from any or all of the following occurring before commencement of this instrument:
 - (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (iii) a company being an affected audit company rather than an authorised audit company;

- (iv) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Declaration – Part 7.9

12. Part 7.9 of the Act applies in relation to a regulated person in relation to a financial product as if:

- (a) section 1012DAA of the Act were modified or varied by inserting the following after subsection (9):

“(9A) For the purposes of the statement referred to in subparagraph 1012DAA(7)(d)(i), the issuer of the relevant product is taken to have complied with the provisions of Chapter 2M as they apply to the registered scheme in which the relevant product is an interest if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”; and

- (b) section 1012DA of the Act were modified or varied by inserting the following after subsection (8):

“(8A) For the purposes of the statement referred to in subparagraph 1012DA(6)(e)(i), the issuer of the relevant product is taken to have complied with the provisions of Chapter 2M as they apply to the issuer (or, if the relevant financial product is an interest in a registered scheme, as those provisions apply to the scheme) if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Declaration – NCCP Act

13. The provisions to which Part 2-6 of the NCCP Act applies apply in relation to an auditor and a credit licensee as if:
- (a) section 105 of the NCCP Act were modified or varied by, after subsection (4), inserting:
 - “(5) For the purposes of this section, an affected auditor (as defined in in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor.”; and
 - (b) regulation 18 of the *National Consumer Credit Protection Regulations 2010 (NCCP Regulations)* were modified or varied by omitting paragraph 18(1)(b); and
 - (c) regulation 19 of the NCCP Regulations were modified or varied by:
 - (i) omitting subparagraph (2)(a), substituting:
 - “(a) the person is any of the following:
 - (i) a registered company auditor;
 - (ii) an authorised audit company (within the meaning given by section 9 of the Corporations Act);
 - (iii) an affected auditor (as defined in in ASIC Class Order [CO 14/757]);
 - (iv) an affected audit company (as defined in in ASIC Class Order [CO 14/757]); and”; and
 - (ii) after subregulation (5), inserting:
 - “(6) If, immediately before the commencement date, a person:
 - (a) was purporting to be appointed as auditor of a licensee; and
 - (b) was not auditor of the licensee merely because the person was:
 - (i) an affected auditor rather than a registered company auditor; or
 - (ii) an affected audit company rather than an authorised audit company;
- then on the commencement date, the person is taken to be appointed as auditor of the licensee.

Note: The licensee does not need to lodge a notice with ASIC in relation to an appointment under subregulation (6).

- (7) In this regulation, *commencement date* means the date that ASIC Class Order [CO 14/757] commences.”.

Exemption – NCCP Act

14. A credit licensee does not have to comply with a requirement under or arising from the provisions to which Part 2-6 of the NCCP Act applies to the extent that:
- (a) apart from this exemption, the licensee would not comply with the requirement; and
 - (b) the non-compliance would result merely from any or all of the following occurring before commencement of this instrument:
 - (i) a person being an affected auditor rather than a registered company auditor;
 - (ii) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (iii) a company being an affected audit company rather than an authorised audit company;
 - (iv) an act, matter or thing being done by an affected audit company rather than an authorised audit company.

Amendment - ASIC Class Order [CO 98/1417]

15. ASIC Class Order [CO 98/1417] is amended by, after “registered company auditor” in paragraph (w), inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment - ASIC Class Order [CO 98/1418]

16. ASIC Class Order [CO 98/1418] is amended by, under the heading “**Interpretation**”, after the definition of “Wholly-owned Entities”, inserting:
- “In this order, for the purposes of determining whether a person has complied with a requirement of Chapter 2M, ignore any non-compliance with the requirement that results merely from any or all of the following:
- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
 - (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;

- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Amendment – ASIC Class Order [CO 98/2016]

17. ASIC Class Order [CO 98/2016] is amended by, after paragraph (b), inserting:

“For the purposes of determining whether the condition in paragraph (a) is satisfied, ignore any non-compliance that has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Amendment – ASIC Class Order [CO 01/1455]

18. ASIC Class Order [CO 01/1455] is amended by, in the first paragraph:

- (a) omitting “subparagraph (b)(iii) of”; and
- (b) omitting “modified by inserting” and substituting:
“modified by:
 - (a) in subparagraph (b)(ii):
 - (i) after “paragraph 741(1)(a)”, inserting “(other than ASIC Class Order [CO 09/425])”; and
 - (ii) after “paragraph 741(1)(b)”, inserting “(other than ASIC Class Orders [CO 01/1455], [CO 04/672], [CO 07/571], [CO 10/321], [CO 10/322] or [CO 14/757])”; and
 - (b) in subparagraph (b)(iii), inserting”; and
- (c) omitting “[CO 05/83], [CO 05/637],”; and
- (d) omitting “[CO 10/654] or [CO 13/1051]” and substituting “[CO 10/654], [CO 13/1050] or [CO 14/757]”.

Amendment - ASIC Class Order [CO 02/184]

19. ASIC Class Order [CO 02/184] is amended by, in condition 5(b) under the heading “**First Exemption — Charitable body etc**”, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment - ASIC Class Order [CO 02/237]

20. ASIC Class Order [CO 02/237] is amended by inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])” after “registered company auditor” where they appear in:
- (a) subparagraph 1(e) under the heading “**First Exemption — Rental pools operated by operators of time-sharing schemes that are exempt from the managed investment provisions**”; and
 - (b) subparagraph (b) under the heading “**Second Exemption — Disclosure relief for rental pools forming part of registered time-sharing schemes**”.

Amendment – ASIC Class Order [CO 02/303]

21. ASIC Class Order [CO 02/303] is amended by, in paragraph 1 of Schedule C, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment – ASIC Class Order [CO 02/304]

22. ASIC Class Order [CO 02/304] is amended by, in paragraph 1 and subparagraph 4(a) of Schedule C, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment – ASIC Class Order [CO 02/305]

23. ASIC Class Order [CO 02/305] is amended by, in paragraph 1 and subparagraph 2(a) of Schedule C, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment – ASIC Class Order [CO 04/194]

24. ASIC Class Order [CO 04/194] is amended by, after paragraph 7.7, inserting:
- “7.8 For this instrument, an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor.”.

Amendment – ASIC Class Order [CO 04/672]

25. ASIC Class Order [CO 04/672] is amended by, in the first paragraph:
- (a) omitting “[CO 05/83], [CO 05/637],”; and
 - (b) omitting “[CO 10/654] or [CO 13/1051])” and substituting “[CO 10/654], [CO 13/1050] or [CO 14/757])”.

Amendment – ASIC Class Order [CO 06/441]

26. ASIC Class Order [CO 06/441] is amended by, after paragraph 13, inserting:
- “13A. For the purposes of determining whether the requirement in sub-paragraph 6(b) is satisfied, ignore any non-compliance with the requirement that results merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Amendment – ASIC Class Order [CO 07/571]

27. ASIC Class Order [CO 07/571] is amended by, in paragraph 4,

- (a) omitting “[CO 05/83], [CO 05/637],” and “[CO 05/910],”; and
- (b) omitting “[CO 06/441] or [CO 10/654]” and substituting “[CO 06/441], [CO 10/654], [CO 13/1050] or [CO 14/757]”.

Amendment – ASIC Class Order [CO 09/425]

28. ASIC Class Order [CO 09/425] is amended by:

- (a) in sub-subparagraph 7(f)(ii)(C), after “apply to the issuer”, inserting “(or if the issuer is the responsible entity of a registered scheme, as they apply to the scheme)”; and

- (b) after paragraph 7, inserting:

“7A. For the purposes of the statement referred to in sub-subparagraph 7(f)(ii)(C), the issuer of the shares or interests is taken to have complied with the provisions of Chapter 2M as they apply to the issuer (or if the issuer is the responsible entity of a registered scheme, as they apply to the scheme) if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor rather than a registered company auditor;
 - (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
 - (c) a company being an affected audit company rather than an authorised audit company;
 - (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”; and
- (c) in subparagraph 14(a), in the definition of *excluded order*, omitting “[CO 06/441] and [CO 10/654]” and substituting “[CO 06/441], [CO 10/654], [CO 13/1050] and [CO 14/757]”.

Amendment – ASIC Class Order [CO 10/321]

29. ASIC Class Order [CO 10/321] is amended by, in subparagraph 5(f), after notional section 713A, inserting:

“713AA Statement regarding compliance with Chapter 2M

For the purposes of the statement referred to in paragraph 713A(m), the body is taken to have complied with the provisions of Chapter 2M as they apply to the body if any non-compliance has resulted merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Amendment – ASIC Class Order [CO 10/654]

30. ASIC Class Order [CO 10/654] is amended by, after paragraph 6, inserting:

“7. For the purposes of determining whether the entity has complied with a requirement referred to in paragraph 6, ignore any non-compliance with the requirement that results merely from any or all of the following:

- (a) a person being an affected auditor (as defined in ASIC Class Order [CO 14/757]) rather than a registered company auditor;
- (b) an act, matter or thing being done by an affected auditor rather than a registered company auditor;
- (c) a company being an affected audit company (as defined in ASIC Class Order [CO 14/757]) rather than an authorised audit company;
- (d) an act, matter or thing being done by an affected audit company rather than an authorised audit company.”.

Amendment – ASIC Class Order [CO 12/752]

31. ASIC Class Order [CO 12/752] is amended by, in paragraph 4, in notional subsection 912AB(11) of the Act, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment – ASIC Class Order [CO 13/760]

32. ASIC Class Order [CO 13/760] is amended by, in paragraph 4, after notional subsection 912AA(11) of the Act, inserting:

“(12) For the purposes of this section, an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor.”.

Amendment – ASIC Class Order [CO 13/761]

33. ASIC Class Order [CO 13/761] is amended by, in paragraph 4, in notional subsection 912AC(10) of the Act, after “registered company auditor”, inserting “or an affected auditor (as defined in ASIC Class Order [CO 14/757])”.

Amendment – ASIC Class Order [CO 13/762]

34. ASIC Class Order [CO 13/762] is amended by, in subparagraph 6(c), after notional paragraph 1013DAB(20)(a), inserting:

“(aa) an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor; and”.

Amendment – ASIC Class Order [CO 13/763]

35. ASIC Class Order [CO 13/763] is amended by, in paragraph 6, after notional subsection 912AD(44) of the Act, inserting:

“(45) For the purposes of this section, an affected auditor (as defined in ASIC Class Order [CO 14/757]) is taken to be a registered company auditor.”.

Interpretation

36. In this instrument:

affected entity means each of the following:

- (a) a director;
- (b) a company, registered scheme and disclosing entity;
- (c) an auditor of a company, registered scheme or disclosing entity, including:
 - (i) an individual, company or firm who consents or purports to consent to be appointed as auditor of a company, registered scheme or disclosing entity;
 - (ii) a director of an audit company or a company referred to in subparagraph (i);
 - (iii) a member of an audit firm or a firm referred to in subparagraph (i).

credit licensee means a ***licensee*** as defined in subsection 5(1) of the NCCP Act.

financial services licensee has the same meaning as in section 761A of the Act.

licensed trustee company has same meaning as in section 601RAA of the Act.

provisions to which Part 2-6 of the NCCP Act applies means:

- (a) Chapter 2 of the NCCP Act; and
- (b) definitions in the NCCP Act, as they apply to references in that Chapter; and
- (c) instruments made for the purposes of that Chapter.

regulated person has the same meaning as in subsection 1011B of the Act.

37. A person is an ***affected auditor*** for the purposes of this instrument if:

- (a) the person is a person whom ASIC purported to register as an auditor under subsection 1280(2) of the Act; and
- (b) at the time of the person's purported registration:
 - (i) ASIC was satisfied that the person satisfied all the components of the auditing competency standard:
 - (A) issued by CPA Australia and The Institute of Chartered Accountants in Australia; and
 - (B) approved by ASIC under section 1280A of the Act in November 2004; and
 - (ii) ASIC was not satisfied that the person had such practical experience in auditing as was prescribed for the purposes of subparagraph 1280(2)(b)(ii) of the Act; and
- (c) the purported registration did not have the effect of making the person a registered company auditor merely because the instrument approving the competency standard under subsection 1280A(1) of the Act ceased to be enforceable or was taken to be repealed by subsection 32(2) of the *Legislative Instruments Act 2003*; and
- (d) the purported registration is not purportedly suspended or cancelled.

38. A company is an ***affected audit company*** for the purposes of this instrument if:

- (a) the company is a company that ASIC has purported to register as an authorised audit company under section 1299C of the Act; and
- (b) the company is not an authorised audit company merely because of either or both of the following at the time of its purported registration:
 - (i) at least 1 of its directors was an affected auditor;
 - (ii) paragraph 1299B(c) of the Act was not satisfied; and
- (c) at the time of its purported registration, a majority of the votes that might be cast at a general meeting of the company attached to shares in the company

that were held and beneficially owned by individuals who were each a registered company auditor or an affected auditor; and

- (d) the purported registration is not purportedly suspended or cancelled.

Dated this 7th day of August 2014

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission