

ASIC CLASS ORDER [CO 07/822]

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 07/822] 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 07/822] amends Class Order [CO 98/98] (“the principal class order”).

The principal class order provides 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.

The principal class order currently requires companies to lodge Form 384 with ASIC for each financial year in which they apply the relief available under the class order.

2. Purpose of the class order

The new terms of the principal class order are intended to reduce the administrative burden on companies relying on the relief to lodge forms with ASIC every year.

3. Operation of the class order

Under the new terms of the principal class order:

- (a) a company only needs to lodge Form 384 for each first financial year in which they start to apply the relief under the principal class order, rather than for each consecutive financial year in which they apply the relief under the class order; and
- (b) a company that has applied the relief under the principal class order must lodge Form 394 when it ceases to apply the relief under the class order, except where they lodge a financial report for the financial year in which they first ceased to take advantage of the relief under the class order.

Companies will only be required to lodge Form 384 with ASIC in a financial year that does not follow a financial year in which they applied the relief. The only companies that would need to lodge Form 384 would be:

- (a) a company in its first financial year which was applying the relief in that year;
- (b) a company that had not applied the relief in previous financial years and was applying the relief for the first time; and
- (c) a company that had applied the relief in previous financial years, but had ceased to apply the relief for a particular period and was applying the relief again for the first financial year following that period of non-application.

4. Consultation

ASIC did not engage in consultation with external parties. The changes are considered to be of a minor or machinery nature. The changes reduce the burden on companies to provide information to ASIC without affecting the quality of publicly available information.