



ASIC

Australian Securities & Investments Commission

[CO 03/392]

Externally administered companies: Financial reporting relief

Issued 5/6/2003

This class order exempts companies in liquidation from the financial reporting obligations in Part 2M.3 of the Corporations Act, and grants certain other externally administered companies an extension of time in which to lodge and, where applicable, distribute an upcoming financial report.

Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 341(1) – Order

Class relief from financial reporting requirements

1. ASIC makes this order under subsection 341(1) of the *Corporations Act 2001* (the **Act**).

Exemption from reporting for companies in liquidation

2. A company that has a liquidator appointed does not have to comply with Part 2M.3 (Financial Reporting) of the Act.
3. The relief in paragraph 2 applies even if a controller is also appointed to property of the company. It does not apply if there is also an administrator of the company.

Extension of time to report for certain companies under administration, in controllership or in provisional liquidation

4. Where a relevant external administrator is appointed in relation to a company no earlier than 3 months before the end of a financial year or half-year (the **reporting period**) for the company, the company does not have to report to members or lodge a report with ASIC for the reporting period in accordance with subsection 315(1),

315(4), 319(1) or 320(1) or section 316 of the Act, until 6 months after that appointment.

Note: If a deadline for reporting to members or lodging a report does not pass during the 6 month period, this relief does not have any application.

5. A company that wants to rely on the relief in paragraph 4 must comply with the following conditions:
 - (a) The company must notify ASIC in writing before the deadline for lodging the report (the *report*) referred to in subsection 319(1) or 320(1) of the Act for the reporting period that it is relying on this instrument. If the company is listed it must also notify each relevant market operator by the time it notifies ASIC.
 - (b) The company must put and keep in place arrangements for answering reasonable inquiries from its members that are:
 - (i) about the consequences of the external administration for them; and
 - (ii) made after the company notifies ASIC under subparagraph (a) and before the company lodges the report.

The inquiries must be answered free of charge to members.

The relief is only available while these conditions are complied with.

Alternative distribution method for annual report after extension of time

6. A company that is covered by paragraphs 4 and 5 in relation to a reporting period that is a financial year and has more than 100 members does not, after the 6 month period, have to report to members for the financial year in accordance with subsection 314(1) or section 316 of the Act.
7. A company that wants to rely on the relief in paragraph 6 must comply with the following conditions:
 - (a) The company must put a notice (the *notice*) that complies with paragraph 8 in a prominent place in a daily newspaper. It must appear on or about the day the company lodges the report (the *annual report*) referred to in section 319(1) of the Act for the financial year with ASIC. The newspaper

must be one that is generally available in the State or Territory in which the company has its registered office and each other State or Territory in which it carries on business.

- (b) The company must take reasonable steps to distribute and make available the annual report in accordance with the notice.

The relief is only available while these conditions are complied with.

8. The notice must state that:

- (a) the annual report has been lodged with ASIC; and
- (b) the annual report will be sent free of charge to a member of the company if the member asks for it in writing; and
- (c) if the company or the relevant external administrator's firm has a website - the annual report is available on the relevant website at a specified Internet address.

Interpretation

9. In this instrument, relevant external administrator means:

- (a) an administrator of a company;
- (b) a managing controller appointed to the whole or substantially the whole of the property of a company;
- (c) a provisional liquidator of a company,

where no other person was acting in one of those capacities in relation to the company at the time of their appointment.

Dated this 5th day of June 2003

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission