

# **[CO 98/2395]**

## **Transfer of information from the directors' report**

### **Practice Note 68**

*Issued 24/12/1998*

*Related documents: [IR 05/42], [IR 99/1].*

*Class Order [CO 98/2395] allows companies, registered schemes and disclosing entities to include information otherwise required to be included in the directors' report in a document which is included with the entity's directors' report.*

<i>Amended by class orders:</i>	<i>Date of operation</i>
[CO 98/2017]	30/10/1998
[CO 05/641]	28/7/2005

For details of amendments see historical notes in this class order.

#### Australian Securities and Investments Commission Subsection 341(1) — Corporations Act 2001— Class Order and Revocation

Pursuant to subsection 341(1) of the Corporations Act 2001 (“the Act”), the Australian Securities and Investments Commission (“ASIC”) hereby makes an order relieving each company, registered scheme and disclosing entity (“the Entity”) from paragraph 298(1)(c), subsection 298(1A), sections 299 to 300 (other than subsections 300(11B) and (11C)) and section 306 of the Act insofar as those sections require certain information to be included in the directors' report (or in the financial report pursuant to subsection 300(2) of the Act) for a financial year or half-year (“the Relevant Period”) on condition that:

- (a) all of that information which is not included in the directors' report (the “Excluded Information”) is included in:
  - (i) a document which is included with the directors' report and financial report for the Relevant Period; or
  - (ii) the financial report (the information required by paragraph 298(1)(c), subsection 298(1A), sections 299 and 299A and both of the subsections numbered 306(2) of the Act may not be transferred into the financial report);
- (b) the directors' report for the Relevant Period includes a clear cross-reference to the page or pages containing the Excluded Information;

- (c) the Entity never distributes or makes available the directors' report and financial report for the Relevant Period to any person (whether a member or not) without the Excluded Information included and takes reasonable steps to ensure that no other person distributes or makes available the directors' report and financial report for the Relevant Period without the Excluded Information included;
- (d) a document containing the Excluded Information is lodged with ASIC as if it were a part of the report required to be lodged with ASIC under section 319 or 320 of the Act in respect of the Relevant Period;
- (e) a directors' report is included in the concise report which is identical to the directors' report except that the page references required by paragraph (b) of this order are updated as necessary; and
- (f) any of the Excluded Information otherwise required by paragraph 298(1)(c), subsection 298(1A) or sections 299 or 299A of the Act is included in any concise report for the purposes of section 314 of the Act and is lodged with ASIC under section 319 of the Act.

*[Historical note: Introductory words amended 28/7/2005 [CO 05/641] by:*

- (i) in the introductory words, replacing "s299, s300, s300A and s306 of the Law" with "paragraph 298(1)(c), subsection 298(1A), sections 299 to 300 (other than subsections 300(11B) and (11C)) and section 306 of the Act";
- (ii) in the introductory words, replacing references to the Corporations Law (wherever occurring) with references to the Corporations Act 2001;
- (iii) in para (a)(ii) replacing "s299" with "paragraph 298(1)(c), subsection 298(1A), sections 299 and 299A and both of the subsections numbered 306(2) of the Act";
- (iv) in para (d) replacing "s319 or s320 of the Law" and substituting "section 319 or 320 of the Act"; and;
- (v) replacing para (f) which formerly read:
  - “(f) any of the Excluded Information otherwise required by s299 or s300A of the Law is included in any concise report for the purposes of s314 of the Law and is lodged with ASIC pursuant to s319”.]

### **Purpose of the class order**

The purpose of this class order is to allow companies greater flexibility in the presentation of their annual reports (comprising financial report, directors' report, auditors' report and attached documents) in order to facilitate improved reporting of information to users of the annual report. It is to be construed with regard to this purpose.

## **Revocation**

Pursuant to subsection 341(1) of the Corporations Law the Australian Securities and Investments Commission hereby revokes Class Order Number 98/2015 dated 30 October 1998.

Dated the 24th day of December 1998

Signed by George Durbridge  
as a delegate of the Australian Securities and Investments  
Commission

## **EDITORIAL NOTE**

### **No transfer of information from the financial report**

To avoid any possibility of doubt, Class Order [CO 98/2395] does not allow entities to transfer information from the financial report to a document attached to the financial report. The only exception is in relation to the information required by s300 of the Corporations Act, which may be included in either the directors' report or the financial report pursuant to s300(2). The order does not permit any information required to be included in the financial report pursuant to any other requirement of the Corporations Act, any condition of any other class order or any requirement of an accounting standard to be transferred to a document attached to the financial report.

### **Information transferred into the financial report**

Any information which is transferred from the directors' report to the financial report becomes a part of the financial report and must be covered by the audit opinion and report pursuant to s307 to 309. However, condition (a)(ii) does not allow the information required by s298(1)(c) (full year auditor's independence declaration), s298(1A) (information to give a true and fair view), s299 (eg review of operations), s299A (discussion and analysis), s298(1)(c) (half-year auditor's independence declaration), to be transferred to the financial report.

### **Prominence of information**

Information transferred out of the directors' report must be given sufficient prominence. As implied by the purpose clause of the order, the purpose of the relief is not to allow companies to give less prominence to information required by the Act.

### **Application to concise reports**

Section 314(2)(b) requires the concise report to include “the directors’ report for the year (see sections 298–300A)”. The effects of applying Class Order [CO 98/2395] in relation to the directors’ report which accompanies the full financial report will continue to be reflected in that report when it is included in a concise report. However, condition (f) of the order requires any information transferred out of the directors’ report to be included in the concise report.

### **Inclusion of s300 information in concise report**

The order does not require the information required under s300 of the Act to be included in a concise report.

This is consistent with the Act itself. Section 314(2)(b) does not require such information to be included in a concise report where the information has been transferred from the directors’ report to the full financial report pursuant to s300(2).

### **Details of fees for non-audit services**

The order does not apply to the details of fees for non-audit services required by s300(11B) and (11C) or the statements by directors required by those subsections. Subsection 300(2) allows certain of the details to be transferred into the financial report where information on total audit fees and total fees for non-audit services is required to be disclosed under the accounting standards. Subsection 300(2A) requires information transferred to be included under a heading “Non-audit services” and a cross reference to be included in the directors’ report.

### **Director and executive remuneration**

The order does not allow any information required to be included in the directors’ report of a listed company by s300A to be transferred out of the directors’ report because:

- (a) The s300A information forms a remuneration report upon which shareholders may make a non-binding vote pursuant to s250R(3); and
- (b) A regulation made in July 2005 specifically allowing certain information required by accounting standard AASB 1046 “Director and Executive Disclosures by Disclosing Entities” to be transferred into the remuneration report that is included in the directors’ report.

### **Comparative information**

Comparative information is not required for information transferred from the directors' report to the financial report unless that information is also required by an accounting standard. At present, there is no accounting standard requiring comparatives for information which is not required to be disclosed pursuant to an accounting standard.