

# Technical Accounting Alert

## ASIC class order relief update

There have been a number of recent changes to certain ASIC class orders related to financial reporting; an overview of the key relevant changes expected to impact Grant Thornton Australia clients is documented below.

### **CO 98/98 Small proprietary companies which are controlled by a foreign company but which are not part of a large group**

#### **Background**

This class order provides certain small foreign controlled proprietary companies relief from the requirement to prepare and lodge audited financial statements, provided the company is not part of a large group.

The thresholds for determining a large group are the same as those for determining large and small proprietary companies, i.e. \$25m revenue, \$12.5m gross assets and 50 employees.

#### **Recent changes**

Companies wishing to take advantage of the relief will generally need only lodge a Form 384 for the first financial year they wish to take advantage of relief whereas previously they were required to lodge Form 384 each financial year they wished to do so.

Companies will also need to lodge a Form 384 when they cease to apply the relief.

### **CO 98/1418 Financial reporting relief for wholly-owned entities**

#### **Background**

This class order provides relief to wholly owned subsidiaries which are a party to a deed of cross guarantee from the requirement to prepare, have audited and lodge financial reports.

#### **Recent changes**

The main amendments to the class order are:

- Wholly owned subsidiaries no longer need to have a three year compliance history with the financial reporting requirements of the Corporations Act 2001 when applying for relief (i.e. previous breaches of the Corporation Act with regards to financial reporting will not now prevent companies obtaining this relief).

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- Companies are no longer required to lodge a notice of use of the relief each year (Form 389), they lodge one ONLY in the first year of application. Provided Form 389 has been previously lodged, this is non-lodgment requirement is effective immediately.

The company will then only lodge a new notice if the group holding entity changes (via Form 389) or when company ceases to apply the relief (via Form 399).

- A removal of the requirement that in order to initially qualify for relief, a lawyer or auditor needed to certify that none of the company's audit reports for the previous three years were qualified.
- There is no longer a requirement for a statutory declaration when first entering into a deed of cross guarantee.
- While there is still a requirement to have a solvency statement, Directors are no longer required to lodge it and only one director now needs to sign it (previously two directors were required to sign).

#### **Class Order 08/15 Disclosing entities – half year financial reporting relief**

This is a new class order which relieves a disclosing entity from the requirement to prepare and lodge a half-year financial report and directors' report during the first financial year of the entity, where that first financial year lasts for eight months or less.

ASIC has previously given case-by-case relief from preparing and lodging half-year reports to entities with a financial year of eight months or less, however under CO 08/15 entities do not have to incur the cost of making individual applications for relief.

#### **CO 08/10 Share and interest sale facilities**

This is a new class order which relieves companies from the provisions of the Corporations Act for the operation of certain share and interest sale facilities.

Share and interest sale facilities are facilities that some companies and issuers of interests in managed investment schemes offer to their members from time to time. These sale facilities can provide an easy and inexpensive way for their members, especially those with small holdings, to dispose of their holdings at or near their current market value.

CO 08/10 provides relief from a range of provisions of the Act, and allows companies and product issuers to offer certain sale facilities and related facilities for the purchase of shares or interests, and reduce costs for those companies and product issuers by removing the need for them to apply to ASIC for individual relief before offering such facilities to their members.

The relief only applies to facilities where the shares or interests are sold in the ordinary course of trading on a licensed market or approved foreign market. The relief is also subject to other limitations and conditions.

### **CO 07/422 On-market buy-backs by ASX-listed schemes**

This class order provides relief from certain provisions of the Corporations Act 2001 to allow the responsible entity of a registered scheme listed on the Australian Securities Exchange to carry out on-market buy-backs of interests.

In order to be eligible for the relief a number of criteria as documented below must be met:

- the scheme's constitution must give the responsible entity power to buy-back interests in the scheme;
- the buy-back must not materially prejudice the responsible entity's ability to pay the scheme's creditors;
- the buy-back must be carried out in the ordinary course of trading on the ASX;
- the responsible entity must comply with the ASX Listing Rules in relation to the buy-back as if the scheme were a company listed on the ASX;
- the responsible entity must not dispose of the interests it buys back and must ensure that, immediately after registration of the transfer to the responsible entity of interests bought-back, the interests are cancelled;
- member approval must be obtained where the buy-back exceeds the '10/12 limit'.  
(The 10/12 limit refers to 10 per cent of the smallest number, at any time during the last 12 months, of interests in the scheme);
- a buy-back within the '10/12 limit' must be disclosed to the ASX; and
- any discretions in relation to the setting of the buy-back price must be exercised reasonably by the responsible entity, and the exercise of any discretions must be documented.

The related regulatory guide RG 101 further explains the relief ASIC has given in CO 07/422 and explains what a responsible entity should do when conducting on-market buy-backs of interests.

### **Further information**

Further information on any of the changes highlighted in this TA Alert update or detailed information on the content of the class orders can be obtained from your local Grant Thornton Australia contact or a member of the National Audit Support team at [NAS@grantthornton.com.au](mailto:NAS@grantthornton.com.au).

