

[CO 99/840]

Transitional relief and quorum requirements

Policy Statement 135

Issued 6/8/1999

Class Order [CO 99/840] sets out the relief given in certain circumstances to give the management company an additional option to meeting the quorum requirements in s1069A(2)(c) of the old Law applied by s1461 of the Law for the purposes of passing a resolution at a meeting convened under s1457 of the Law. See Policy Statement 135.

Amending Class Order

Date of operation

[CO 00/1067]

25/5/2000

Australian Securities and Investments Commission
Corporations Law — Paragraph 601QA(1)(b) — Declaration

Pursuant to paragraph 601QA(1)(b) of the Corporations Law (Law) the Australian Securities and Investments Commission (ASIC) hereby declares that the provisions of Division 11 of Part 11.2 of the Law apply in relation to the persons mentioned in Schedule A as if:

1. immediately after paragraph 1460(1)(a) a new paragraph 1460(1)(aa) were inserted as follows:
 - “(aa) a body chosen by the holders of the prescribed interests as the proposed responsible entity at a meeting under paragraph 1457(1)(a) where:
 - (i) the resolution by which the body is chosen meets all requirements for the passage of a resolution under paragraph 1457(1)(a) save for the quorum requirement which applies under paragraph 1069A(2)(c); and
 - (ii) the management company lodges a notice that the body is the proposed responsible entity.”; and
2. a new subsection were inserted immediately after subsection 1460(1) as follows:
 - “(1A)A management company must not lodge a notice under sub-paragraph 1460(1)(aa)(ii) that a body is a proposed responsible entity unless and until:
 - (a) the management company has taken all reasonable steps to maximise the extent to which holders of the relevant prescribed interests voted at the meeting referred to in paragraph 1460(1)(aa) including:

- (i) making prominent disclosure of the importance of voting in the notice of the meeting;
 - (ii) sending with each notice of the meeting a covering letter that includes:
 - (A) prominent statements to the effect that voting is important;
 - (B) a reply paid address to which proxy forms may be sent to the management company; and
 - (C) a telephone number that may be accessed for no more than the cost of a local call at which inquiries of the management company about the meeting may be made during business hours from the date of the notice until the date of the meeting;
 - (iii) sending with each notice of the meeting a proxy form and advising that a specified officer of the management company is available to act as a proxy for holders of prescribed interests on the basis that the officer will vote in accordance with the direction of a holder specified in a proxy form if the holder completes the form and sends it to the management company at least 3 days before the meeting;
 - (iv) advising of the rights of holders of prescribed interests to appoint any other natural person as a proxy in accordance with section 1069B;
 - (v) lodging with the trustee or representative, at least two days before the meeting, all proxy forms sent to the management company;
 - (vi) where the management company became aware that it or the trustee or representative had received a proxy form that was not completed in a way that made it effective, taking all reasonable steps to solicit a new proxy form from the relevant holder; and
 - (vii) publicising the meeting and the importance of voting at the meeting in, or in a document accompanying, any communication sent to all the holders of prescribed interests in the interval on or after 6 August 1999 or the date of the notice (whichever is the earlier) until the date of the meeting;
- (b) a notice has been sent to all the prescribed interest

holders as soon as practicable after the meeting referred to in paragraph 1460(1)(aa) that:

- (i) notified them of the result of that meeting;
 - (ii) informed them that they could request a further meeting to consider the matters referred to in paragraph 1457(1)(a);
 - (iii) informed them that such a further meeting would be convened if 100 holders that would be entitled to vote at a meeting under paragraph 1457(1)(a) to choose the proposed responsible entity or such holders holding 5% by value of the prescribed interests held by holders that would be so entitled requested a further meeting within 28 days of the date of issue of the notice;
 - (iv) informed them that no requirement that the choice of a proposed responsible entity be voted on by those holding 25% by value of all the prescribed interests held by those entitled to vote on the question would apply at that meeting;
 - (v) prominently stated a reply paid address to which requests for a further meeting were to be sent for the requests to be taken into account; and
 - (vi) prominently stated that if a further meeting was not held, the entity chosen at the meeting already held under paragraph 1457(1)(a) would be taken to be the proposed responsible entity; and
- (c) where the relevant number of holders required a further meeting, a meeting was held at which a resolution was passed that the body be chosen as the proposed responsible entity which resolution met all requirements for the passage of a resolution under paragraph 1457(1)(a) save for the quorum requirement which applies under paragraph 1069A(2)(c)."

SCHEDULE A

Any person that is:

- (a) the management company;
- (b) the trustee or representative; or

- (c) a body that is the subject of a resolution at a meeting under paragraph 1457(1)(a) of the Law that the body be the proposed responsible entity

in relation to any scheme, undertaking or enterprise to which Division 11 of Part 11.2 of the Law applies other than a person to which ASIC Class Orders [98/59], [98/1807] or [00/1067] applies.

[Historical note: [CO 99/840] was amended 25/5/2000 by deleting the words “(second appearing)” in the first paragraph and in the schedule and replacing the words “ASIC Class Order 98/59 or 98/1807” in the Schedule and substituting the words “ASIC Class Order [98/59], [98/1807] or [00/1067]”.]

Dated this 6th day of August 1999

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