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30 October 2015

Douglas Niven
Senior Executive Leader Financial Reporting and Audit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000
By email: policy.submissions@asic.gov.au

Dear Doug,

ASIC CP 240 Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters (October 2015)

I am pleased to make this submission on ASIC's proposals to refresh various Class Orders on financial reporting.

I have had many years experience advising on financial reporting and Corporations Act related issues, primarily at my former employer Ernst & Young. My role included answering complex questions from staff and clients around the country on Class Orders, and reviewing the financial statements of listed companies prior to issue.

I have the following objections to the proposed Class Order on synchronisation of financial years.

a) I believe that the benefits of the Class Order should apply to all entities wanting to synchronise their financial year with a foreign parent. These benefits are having up to an 18 month financial year, therefore avoiding the need to prepare, and have audited, an additional financial report under the short-financial year mechanism under sec. 323D.

   Many companies want to synchronise their financial year with their foreign parent, irrespective of whether there is a requirement in that foreign jurisdiction (paragraph 5(2)(a)(i)) to undertake that synchronisation in foreign (in this case, Australian) jurisdictions.

   There does not appear any policy reason to impose additional costs on companies (by denying them the benefits) whose foreign parent is not subject to such a requirement.

b) Many accountants know that there is a provision in the Corporations Act allowing an 18 month year to synchronise a financial year with that of a parent. What many do not know is that due to the wording in the Corporations Act, this provision is limited to synchronisation with Australian parents. I expect that many companies are inadvertently not complying with the law in these circumstances, by assuming there are entitled to the 18 month financial year.

   Similar to my comment above, there does not appear any policy reason, or indeed intention by the drafters of the Corporations Act or its precedent, that this restriction should apply.

c) If ASIC persists in restricting the relief, (paragraph 5(2)(a)(i)), then there needs to be an improvement in communicating which applicable foreign jurisdictions the proposed Class Order applies to. At present, companies have to incur professional and legal advice to determine if the foreign jurisdiction includes the applicable restriction. These costs are often incurred in the (usually false) hope that relief can be obtained under the existing Class Order. For those companies that do not meet the requirements of the proposed (and previous) Class Order, they then have to incur additional professional and legal advice to request ASIC for individual relief.

   In line with the government's red tape reduction, it would be a lot easier for companies if the restrictions on use of the Class Order were removed. Again, if ASIC persists in the restriction, it would help companies if some sort of list of countries, or common countries (e.g. UK, USA (such as Delaware given their state based system), Singapore etc.) where the class order may or may not be

applicable. While I acknowledge that ASIC cannot give legal advice, there should be a better way than that operating presently, where companies are unnecessarily incurring costs in a false hope as it appears that very few jurisdictions actually have the applicable synchronisation requirement that is required by the Class Order.

d) I do not understand paragraph 5(1). I suspect if my suggestion above of removing the restriction as to which companies the proposed Class Order would apply to, this issue would be resolved.

e) I do not understand why paragraph 5(3) refers to the financial year as defined by the foreign law, of the Australian company, rather than of the Corporations Act definition. In particular, why a solvency declaration should be linked to a foreign law, rather than the Australian Corporations Act.

f) Paragraph 5(3)(b) appears to unnecessarily restrict the application of the Class Order to proprietary companies with a short financial year, in particular those that would be "large" for 12 months, but "small" if the amounts are measured in relation to a short-financial year, such as 9 months.

There is no similar restriction in the synchronisation provisions for an Australian parent, and there does not appear to be any policy reason why the relief is denied (and additional costs imposed) for companies with a foreign parent.

There also appears to be an additional burden on such companies as they have to undertake a calculation of the notional financial year, but aggregating the amounts for (say) the 9 months for the financial year, and then to determine and add an amount for the last (say) 3 months of the previous financial year.

I note that there are provisions in the Corporations Act requiring financial statements for small proprietary companies. Again, it is not clear the policy reason for imposing these additional costs.

I have no objections to the other proposed Class Orders. I note that the proposed rounding Class Order will remove rounding for the Directors' Report in relation to options issued, and relevant interests in shares and units. I cannot recall specific instances of companies or trusts rounding these amounts anyway.

I have the following suggestions for improvement:

a) There should be an accompanying document explaining the purpose of each Class Order, similar to what was issued with revised Class orders under ASIC CP233. Such Explanatory Statements were not included with the draft, so it is unclear to me as to whether they are proposed to be issued or not.

b) Each Class Order, or Explanatory Statement, should include a direct reference to the Class Order it replaces to provide ease of reference to follow the history of the Class Order and its precedents. Existing Class Orders usually have a reference to the Class Order it replaced, and a table of amendments. The Explanatory Statements accompanying the Class Orders reissued under CP233 have such a cross-reference.

c) In relation to Attachment 1 – Rounding, I suggest a comment or note about comparatives when a company "goes down" in rounding, e.g. from rounding to the closest $1000, to not rounding. An example is a research and development or mining exploration company that had more than $10 million in assets last year (e.g. they were cashed up), and now have less than $10 million (because the cash has been spent). A common question in these (albeit uncommon) situations was whether the previous year comparatives could be "rolled over" with the rounding. While it might seem like common sense to have the same rounding (or lack of it) for both financial years, I still received the question. I note that the proposed Class Order clarifies comparatives when the particular Class order is used.

d) In relation to Attachment 1 – Rounding, the provisions work well for columns of numbers. I did find that companies often had difficulty in dealing with rounding in narratives in which amounts were disclosed. For example, a company rounding to the nearest $1000, was an amount of $2,000 disclosed in the narrative meant to represent $2,000.00 or $2,000,000.00? Sometimes companies disclosed the amount as $2,000K for clarity. I have no specific suggestions. Usually, the amount could be worked out, and sometimes it represented $2,000.00 and other times it was $2,000,000.00. I note that this confusion would be resolved by XBRL where specification of amounts is more specific.

e) In relation to Attachment 1 – Rounding, para 5(f) only refers to "relevant financial report" while the previous class order referred to "relevant financial report or report". It appears that the directors' report no longer has to include a reference to the adoption of the proposed class order. Is this intended?

f) In relation to Attachment 1 – Rounding, para 5(h) refers to "eligible clearly". This appears to be a typo (instead of eligible report clearly).

g) In relation to Attachment 2 – Uncontactable members – it appears that for an uncontactable member that has not "opted-in" for a hard copy report, that a company must continue to send notices to that uncontactable member after 6 years under sec. 314(1AA)(c) as to where the electronic copy is located. Have I interpreted the proposed class order correctly, and was this intended?

h) In relation to Attachment 5 – Disclosing entities – While companies would benefit from a class order to align a half-year (being exactly 6 months from date of registration +/- 7 days), e.g. instead of from 17 September to 17 March to from 17 September to 31 December, I do not think this can be easily implemented. I think that a reference, for example in an Explanatory Statement, to ASIC powers to give case by case relief is sufficient.

Yours faithfully,

David Hardidge