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Our ref Submission - CP 248 - Foreign  
entities

29 February 2016

Dear Doug

**Consultation Paper 248: Remaking ASIC class orders on reporting by foreign entities (CP 248)**

Thank you for the opportunity to provide comments in relation to CP 248.

We agree that each class order is operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework, and support the remaking of the class orders detailed in CP248 as a new legislative instrument. We do, however, wish to highlight a concern in the drafting of Part 2 of the draft legislative instrument in the Appendix to this letter.

In addition we agree that ASIC should be able to notify an entity that the relief provided in the draft legislative instrument may not be relied on. We believe the need to exercise this power would be required in a limited number of specific situations.

We would be pleased to discuss our comments with you or your staff. If you wish to do so, please contact me on (02) 9455 9744.

Yours sincerely

A handwritten signature in black ink, appearing to read 'MJV', written over a light grey rectangular background.

Michael J Voogt  
Director

## **Appendix**

### ***Drafting of Part 2***

Our comment concerns the drafting of Part 2, Item 5 (2) (d).

We do not understand the purpose of Item 5 (2) (d) and in what circumstances it is intended to not permit companies to apply the relief outlined in Item 5 (1).

If we take a simple example of a small proprietary company that is foreign owned and is not part of a large group. For the last (say five) years the small proprietary has qualified for relief from Part 2M.3 of the Corporations Act under Class Order 98/98. In the following year there has been no change in circumstance – such that if Class Order 98/98 continued to apply the company would receive relief from Part 2M.3 of the Corporations Act.

However, in applying the draft new legislative instrument to the current year the following assessment is made for Part 2, Item 5 (2).

All of the following must apply:

- a) Yes, the company is not part of a large group
- b) Yes, the directors have resolved in the appropriate timeframes to rely on the relief
- c) Yes, the company relied on the relief in respect of the last financial year (Item 5 (2) (c) (i))
- d) No, one of the following does not apply (see discussion below)
- e) Yes, ASIC has not notified the company that it cannot rely on the relief.

#### *Item 5 (2) (d)*

The current drafting requires one of either paragraphs (i) or (ii) to apply. However, in our simple example fact pattern above neither would apply – as the company would like to continue to rely on the relief provided.

Should Item 5 (2) (d) be drafted to read **neither** of the following applies?

Alternatively is Item 2 (d) required at all? Using our simple fact pattern above the company is still seeking to apply the relief. If a company no longer wished to seek the relief provided it would simply not resolve to do so under Item 5 (2) (b).