



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 115

# Audit relief for proprietary companies

**Chapter 2M and s342(1) and (2)**

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*From 5 July 2007, this document may be referred to as Regulatory Guide 115 (RG 115) or Policy Statement 115 (PS 115). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 115.1) or their policy statement number (e.g. PS 115.1).*

### Headnotes

*Relief from audit requirements for proprietary companies; class order relief given; s 342(1) and 342(2); ASIC policy for giving audit relief; procedures for obtaining audit relief.*

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## Contents

<b>Purpose</b> .....	<b>2</b>
<b>Class order relief given</b> .....	<b>2</b>
<b>Interpretation</b> .....	<b>3</b>
<b>Reporting requirements for proprietary companies</b> .....	<b>4</b>
<b>ASIC power to give audit relief</b> .....	<b>4</b>
<b>ASIC policy for giving audit relief</b> .....	<b>5</b>
Objective of an audit.....	5
Unreasonable burden.....	6
<b>Expected costs and benefits of complying with the audit requirements (s342(2)(a) and 342(2)(b) and s342(3))</b> .....	<b>6</b>
Costs.....	6
Benefits.....	7
Directors and shareholders agree to dispense with an audit.....	7
Well managed companies in a sound financial condition.....	8
<b>ASIC requirements for giving audit relief</b> .....	<b>9</b>
Directors' and shareholders' resolutions that an audit is not required.....	10
Well managed companies in a sound financial condition.....	13
Financial report compiled by a Prescribed Accountant.....	16
Lodging financial report.....	17
Extension of time by an officer of ASIC.....	17
<b>Procedures for obtaining individual audit relief</b> .....	<b>18</b>
<b>Transitional matter concerning previous version of Regulatory Guide 115</b> .....	<b>19</b>
Background.....	19
Statement as to use of order.....	19

## Purpose

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RG 115.1 This guide refers to class order relief already given by ASIC to certain proprietary companies from the requirement to have their financial report audited under the Corporations Act 2001 (“the Act”). This guide also indicates when ASIC will give additional relief from this requirement, to individual proprietary companies, on a case by case basis: s340.

## Class order relief given

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RG 115.2 Relief from the audit requirements has been given under Class Order [CO 98/1417] (“the Class Order”) to proprietary

companies that have not had their financial report audited for any financial year ending during 1993 or since, and are not:

- (a) “grandfathered” large proprietary companies under s319(4) of the Corporations Law (as taken to be included in the Act by s1408(2) of the Act);
- (b) disclosing entities (see s111AC);
- (c) borrowers (see s9);
- (d) the guarantors of borrowing corporations; or
- (e) licensed securities dealers or futures brokers.

[*Historical note:* RG 115.2(a) amended 7/11/2001 by inserting “s319(4) of the Corporations Law (as taken to be included in the Act by s1408(2) of the Act)” after the words “large proprietary companies under”.

RG 115.2(c) amended 7/11/2001 by replacing “borrowing corporations” with “borrowers”.]

RG 115.3 This guide does not deal with relief from the financial reporting and audit requirements of the Act other than audit relief for proprietary companies. In relation to relief from other financial reporting requirements of the Act, reference should be made to ASIC Regulatory Guide 43 *Accounts and audit relief* (RG 43).

RG 115.4 This guide and the Class Order may be revised by ASIC as more information becomes available concerning the types and number of large proprietary companies and the operation of the relief over time, or after reviews of the reporting obligations of proprietary companies.

## Interpretation

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RG 115.5 In this guide, references to:

- (a) sections are references to sections of the Corporations Act 2001 (“the Act”);
- (b) “Regulations” are to the Corporations Regulations;
- (c) “the Class Order” are to ASIC Class Order [CO 98/1417] dated 13 August 1998;
- (d) “large proprietary companies” are to large proprietary companies that are not large “grandfathered” proprietary companies under s319(4) of the Corporations Law (as taken to be included in the Act by s1408(2) of the Act); are not disclosing entities; are not borrowing corporations; are not guarantors of borrowing corporations; and are not licensed securities dealers or futures brokers;

- (e) “the audit requirements” are to the audit obligations described in Chapter 2M of the Act;
- (f) “audit relief” are to relief from the audit requirements of Chapter 2M of the Act;
- (g) “auditing standards” are to the standards prepared and issued by the Auditing Standards Board of the Australian Accounting Research Foundation (“AARF”) on behalf of the Australian Society of Certified Practising Accountants (“ASCPA”) and The Institute of Chartered Accountants in Australia (“ICAA”);
- (h) “miscellaneous professional statements” are to statements issued by the ASCPA and ICAA; and
- (i) “an officer of ASIC” are to officers of ASIC to whom ASIC’s powers and functions under s340 have been delegated.

*[Historical note: RG 115.5(d) amended 7/11/2001 by inserting “of the Corporations Law (as taken to be included in the Act by s1408(2) of the Act)” after the words “under s319(4)”.]*

## Reporting requirements for proprietary companies

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RG 115.6 The distinction between large and small proprietary companies is based on revenue, assets and employees: see s45A(3).

RG 115.7 A large proprietary company or a small proprietary company which is controlled by a foreign company must prepare and lodge with ASIC a financial report, a directors’ report and an auditor’s report within four months after the end of the company’s financial year: s319(3). The financial report, directors’ report and auditor’s report must also be given to shareholders within these four months: s315(4). The auditor must form an opinion in relation to the company’s financial report for the financial year as well as the company’s accounting records and other records relating to that financial report: s307. The auditor must also report to members in accordance with s308.

## ASIC power to give audit relief

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RG 115.8 Before ASIC gives audit relief it must be satisfied that compliance with the audit requirements:

- (a) would be misleading;
- (b) would be inappropriate to the circumstances of the company; or

- (c) would impose on the company, its officers or the auditor (if any) of the company, an unreasonable burden (s342(1)).

This guide sets out ASIC's policy in relation to the unreasonable burden criterion only.

RG 115.9 The matters ASIC is to have regard to in deciding whether the audit requirements impose an unreasonable burden on a proprietary company are set out in s342(2). These matters are:

- (a) the expected costs of complying with the audit requirements (s342(2)(a));
- (b) the expected benefits of complying with the audit requirements (s342(2)(b)). In assessing the expected benefits of complying with these requirements ASIC is to take into account the number of creditors and potential creditors (s342(3)(a)); the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the company or companies) (s342(3)(b)); and the nature and extent of the liabilities of the company or companies (s342(3)(c));
- (c) any practical difficulties in complying effectively with these requirements (in particular any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the company or companies are likely to move frequently between the small and large categories from one financial year to another) (s342(2)(c)); and
- (d) any unusual aspects of the operation of the company or companies during the financial year concerned (s342(2)(d)).

ASIC is also to have regard to any other matters it considers relevant: s342(2)(e).

## **ASIC policy for giving audit relief**

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### **Objective of an audit**

RG 115.10 The objective of an audit of a financial report is to enable an auditor to express an opinion as to whether the financial report is prepared, in all material respects, according to an identified financial reporting framework: see Auditing Standard AUS 202 — “Objective and General Principles Governing an Audit of a Financial Report”.

RG 115.11 The persons most likely to benefit from an audit include, but are not limited to, shareholders, directors, creditors and

potential creditors. For these persons an audit enhances the credibility and reliability of a company's financial report.

## Unreasonable burden

RG 115.12 Compliance with the audit requirements imposes a burden on the company, its officers and its auditors. Depending on the expected costs and benefits that an audit provides, the burden may be unreasonable.

RG 115.13 For this purpose, a burden is unreasonable if it goes beyond what is based on reason or good sense and goes beyond what is equitable, or is excessive: see *Mazda Australia Pty Ltd v ASC* (1992) *ASC Digest* at AC 9; 8 ACSR 613 and the discussion in RG 43.

RG 115.14 When assessing whether a burden is unreasonable ASIC will consider the matters set out in s342(2) and 342(3). ASIC's policy on these matters is set out in RG 115.16–RG 115.30.

RG 115.15 It is unlikely that audit relief will be given unless the company applying for the relief generally meets the requirements set out in RG 115.31–RG 115.56 of this guide. However, where a company is unable to comply with the requirements, but clearly meets ASIC's policy as set out in RG 115.16–RG 115.30 in some other way, relief may be given on the basis of analogous requirements.

## **Expected costs and benefits of complying with the audit requirements (s342(2)(a) and 342(2)(b) and s342(3))**

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### Costs

RG 115.16 The expected costs of complying with the audit requirements are an unreasonable burden, if these costs are out of all proportion to the expected benefits resulting from an audit. The benchmark to be applied by ASIC is the legislative policy that in general for large proprietary companies the expected costs of an audit are worth incurring for the sake of the expected benefits they bring. This guide is principally about cases where the expected costs are out of all proportion to the expected benefits because the expected benefits are expected to be minimal. The additional costs and administrative burden of complying with the audit requirements are not in themselves unreasonable.

RG 115.17 The fact that a company has had its financial report audited may indicate that there are in existence persons already using

the audit report, that the costs of compliance are not excessive, or both. Directors of a company who apply for audit relief should deal with these matters in an application for relief in addition to the requirements set out in paragraphs RG 115.31–RG 115.63 of this guide.

## **Benefits**

RG 115.18 When assessing the expected benefits of complying with the audit requirements, ASIC will consider the position of persons most likely to benefit from an audit. These include the company's directors, shareholders, creditors and potential creditors.

RG 115.19 When considering the position of these persons, ASIC's objective is to minimise the potential for these persons to be disadvantaged by audit relief. To achieve this objective ASIC will not generally give audit relief unless:

- (a) shareholders and directors of the company agree that an audit of the company's financial report is not required; and
- (b) ASIC is satisfied that the company is well managed and in a sound financial condition, in respects most directly relevant to the interests of creditors.

ASIC's policy rationale for these two requirements is discussed in RG 115.20–RG 115.23.

## **Directors and shareholders agree to dispense with an audit**

RG 115.20 Directors and shareholders of a company can make informed decisions as to whether or not it is in their interests to dispense with the audit. ASIC will, in general, require the unanimous agreement of directors and shareholders, because any shareholder or director may be disadvantaged if an audit is dispensed with.

RG 115.21 Obtaining unanimous agreement may only be practicable in circumstances when for example, the number of shareholders and directors is small or when both groups have a fairly direct involvement with the company. However, it is outside these circumstances that the additional assurance provided to shareholders and directors by an audit may be most needed.

## **Well managed companies in a sound financial condition**

RG 115.22 ASIC must also consider the interests of creditors and potential creditors: s342(3). In general, it will not be practicable to obtain the consent of a company's existing and prospective creditors to dispense with an audit.

RG 115.23 In order that creditors and potential creditors are not disadvantaged if an audit is dispensed with, ASIC will only give audit relief to companies which it is satisfied will be well managed and in sound financial condition, in respects most directly relevant to the interests of creditors. These requirements are not a direct substitute for an audit. However, those companies that meet them are the ones most able to give creditors and potential creditors the type and quality of financial information otherwise required by the financial reporting framework.

### ***Practical difficulties (s342(2)(c))***

RG 115.24 Practical difficulties in complying effectively with the audit requirements may arise in the first year for which an audit is required. This is because a proprietary company may not be able to determine that it will be "large" until late in its financial year: see s45A. This prevents the timely appointment of an auditor. An appointment late in a financial year, or even after the financial year end, may cause practical difficulties because this may not give an auditor enough time to properly plan and carry out the audit. This may result in additional costs and the auditor's opinion being qualified.

RG 115.25 ASIC will not give audit relief, simply because of the late appointment of the auditor, unless the expected additional costs arising from the late appointment of an auditor, or the expected diminished benefits arising from any resulting audit qualifications, make the burden of the audit requirements unreasonable. To the extent that the increase in burden is a result of unnecessary delay in the appointment of the auditor by the company, ASIC will not take this increased burden into account when considering giving relief.

### ***Unusual aspects (s342(2)(d))***

RG 115.26 Audit relief may also be appropriate when a proprietary company which is usually "small" (and is not controlled by a foreign company) becomes "large" because of an unusual aspect in its operations during the relevant financial year. This may occur, for example, when a company disposes of a major asset and as a result



becomes a large proprietary company for a year by reaching \$10 million consolidated gross operating revenue.

RG 115.27 ASIC will consider giving audit relief when the circumstances that result in the proprietary company being classified as “large” can reasonably be regarded as “one off” or unlikely to recur or unusual.

RG 115.28 However, ASIC will not generally give audit relief to a company which is expected to be a large proprietary company on a regularly recurring basis, even though it may be classified as a small proprietary company in other years.

### ***Other matters (s342(2)(e))***

RG 115.29 ASIC will also consider any other matters that do not fall within any of the matters described in RG 115.16–RG 115.28 if they are relevant to giving audit relief.

RG 115.30 For example, relief may be appropriate when a proprietary company is subject to external oversight involving an independent examination of its financial report. Such a situation may arise where companies are:

- (a) regulated by government agencies or departments; or
- (b) subject to legislation other than the Act which requires their financial reports to be independently examined.

## **ASIC requirements for giving audit relief**

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RG 115.31 ASIC will generally only give audit relief to a proprietary company under this guide if the following requirements are met:

- (a) directors and shareholders of the company agree that an audit is not required;
- (b) ASIC is satisfied that the company applying for audit relief is well managed and in a sound financial condition, in respects most directly relevant to the interests of creditors;
- (c) the company’s year end financial report is compiled by a “Prescribed Accountant”; and
- (d) the company lodges its financial report within the deadlines in the Act.

These requirements are discussed in greater detail in RG 115.32–RG 115.56. This discussion generally refers to the requirements in the Class Order.

## **Directors' and shareholders' resolutions that an audit is not required**

### ***Unanimous resolutions***

RG 115.32 Relief will be given only when directors and shareholders (whether holding voting or non-voting shares) unanimously resolve that the company's financial report should not be audited for each financial year to which the relief applies. These resolutions must be made within the period commencing 3 months before the start of the financial year and ending 1 month after the start of the financial year, or within such other time as approved in writing by an officer of ASIC.

*[Historical note: RG 115.33 renumbered 5/4/2000 as RG 115.39C. The paragraph formerly read:*

*“RG 115.33 ASIC will consider granting extensions of time to make the resolutions in rare and exceptional circumstances. For example, subparagraphs (e)(ii) and (iii) of the Class Order generally allow newly incorporated companies 3 months from the date of incorporation to make these agreements and small proprietary companies will generally have 3 months from the date of becoming foreign controlled. In addition, ASIC will consider cases where a proprietary company which is not controlled by a foreign company becomes large for the first time as a result of an event which was not planned and could not have been anticipated prior to the deadline for making the resolutions (eg the acquisition of a significant new business late in the financial year).”]*

RG 115.34 It may sometimes be practically difficult to obtain the unanimous resolutions of shareholders and directors. Such difficulties may arise when, for example, directors or shareholders cannot be contacted for a prolonged period.

RG 115.35 ASIC will consider giving individual relief to dispense with this requirement where there is clear and documented evidence that:

- (a) reasonable attempts have been made to obtain the unanimous agreement of directors and shareholders;
- (b) all remaining directors and shareholders agree to dispense with the audit; and
- (c) those who have not been contacted represent a small minority of voting rights.

RG 115.36 The agreement of directors and the agreement of shareholders is to be given by way of separate resolutions. The resolution of shareholders can be passed at a general meeting or by circulating the resolution for signing.

RG 115.37 When the resolution of shareholders is sought at a general meeting, the shareholders must receive a notice of meeting. In the notice of meeting the directors must state whether in their opinion, the expected costs of having the financial statements of the company audited outweigh the expected benefits of the audit. The reasons for the directors' opinion must also be included. When the resolution of shareholders is sought by way of a circulating resolution, this circulating resolution must be accompanied by the same information required for the notice of meeting.

### ***Notice of resolutions to be lodged***

RG 115.38 After the resolutions of directors and shareholders are obtained, a notice that the company is relying on the audit relief must be lodged with ASIC. The notice can be lodged on ASIC Form 382 at any ASIC Business Centre. This notice will appear on ASIC's public database.

RG 115.39 This notice must be lodged within the period commencing 3 months before the start of the financial year and ending 1 month after the start of the financial year, or within such other time as is approved, in writing, by an officer of ASIC.

*[Historical note: RG 115.39 was amended 5/4/2000 by deleting the second and third sentences which read: "ASIC will consider granting extensions of time in rare and exceptional circumstances: see RG 115.33–PS 115.55 and RG 115.56. Examples of circumstances which may be rare and exceptional circumstances for this purpose are as outlined in RG 115.33.".]*

### ***Late resolutions and late forms***

RG 115.39A The Act requires all proprietary companies which are required to prepare financial statements under Chapter 2M to have those financial statements audited. Audit relief is a privilege rather than a right and the requirements for relief in paragraphs (a) to (v) of the Class Order were developed as a part of an extensive consultation process with creditor groups, companies, accountants and others.

RG 115.39B The conditions in the order were each developed to meet specific objectives and the conditions are not interchangeable. It is not sufficient for a company to meet all but one of the conditions of the Class Order in order to obtain relief. For example, the fact that a company meets the financial requirements for relief does not mean

that the notice that the shareholders and directors have resolved to take advantage of audit relief (in the form of Form 382) can be lodged late. Timely lodgment of the notice is intended to provide information to creditors and others who access the public record.

RG 115.39C ASIC will consider granting extensions of time to make the resolutions and to lodge notice in the form of Form 382 only in rare and exceptional circumstances. For example, subparagraphs (e)(ii) and (iii) of the Class Order generally allow newly registered companies three months from the date of registration to make these agreements and small proprietary companies will generally have three months from the date of becoming foreign controlled. In addition, ASIC will consider cases where a proprietary company which is not controlled by a foreign company becomes large for the first time as a result of an event which was not planned and could not have been anticipated prior to the deadline for making the resolutions (eg the acquisition of a significant new business late in the financial year).

RG 115.39D Many companies engage accountants, lawyers or other advisers to prepare draft resolutions and forms. In some cases, these advisers may fail to prepare draft resolutions or forms, or to lodge forms, within the times required by the Class Order. The fact that a company has chosen to outsource certain functions rather than those functions being performed by the directors or an employee does not absolve the company of its responsibilities. Extensions of time will still only be granted in rare and exceptional circumstances. For example, a mere oversight by an adviser or a lack of due care by an adviser will not be considered to constitute rare and exceptional circumstances even if the resolutions were made, and the forms lodged, on time in prior years.

RG 115.39E Refusal to grant an extension of time to make resolutions or to lodge Form 382 should not be considered a penalty on the company. It would be inappropriate to penalise creditors or others who may deal with the company for a failure by the company. Timely completion of resolutions, and the evidencing of those resolutions by lodgment of Form 382, serves other objectives, such as ensuring that shareholders and directors are not pressured to agree to audit relief at a point in the financial year when it is no longer possible to obtain an unqualified audit opinion. Where the obligations are not completed on time, this may cast doubt as to whether the company is well managed and is meeting the other requirements for audit relief on time (eg the requirements in relation to quarterly management accounts).

RG 115.39F Lodgment of a Form 382 for ASIC's public database and the processing of that form onto the database does not indicate

that ASIC has given any form of approval and does not alone enable a company to take advantage of audit relief under the Class Order. A company will only have the benefit relief if it meets all of the requirements of the Class Order. Where the form is late, a company will only have the benefit relief if it is specifically granted an extension of time by ASIC in accordance with the Class Order.

RG 115.39G An application for extension of time to make resolutions or lodge Form 382 must be signed by at least one director and include detailed explanations of the circumstances which the directors regard as being rare and exceptional. ASIC may seek further evidence of the circumstances, including, but not limited to, statutory declarations.

*[Historical note: RG 115.39A–RG 115.39G were inserted 5/4/2000.]*

### ***Notice on the company to require an audit***

RG 115.40 Even after the directors and shareholders have resolved to dispense with an audit, any director and any shareholder can, in certain circumstances, require the company's financial report to be audited. Similarly, holders of certain types of subordinated debt who have agreed that an audit is not required may request an audit.

RG 115.41 This request can be made by any director at any time up until the date the directors' declaration is signed for the relevant year end financial report. Any shareholder, or a group of shareholders, who individually or together control at least 5% of the voting rights can also make this request, at any time until one month before the end of the relevant financial year, or within such other time as approved, in writing, by an officer of ASIC. The percentage of votes required by a shareholder or shareholders requesting the audit is calculated as at the close of business on the day before the notice is served on the company. The request must be in the form of a written notice served on the company: see s220 and 109Y.

### **Well managed companies in a sound financial condition**

RG 115.42 Audit relief will only be available to those proprietary companies which are well managed and in a sound financial condition in respects most directly relevant to the interests of creditors. These requirements are discussed in the following paragraphs.

#### ***Well managed***

RG 115.43 The criterion ASIC has used in the Class Order to determine that companies are well managed, in respects most directly

relevant to the interests of creditors, requires that directors have appropriate internal management systems and procedures which allow them to assess the financial condition and the solvency of the company. The nature of these systems and the frequency of these procedures must be adequate for this purpose and appropriate to the company's business and financial circumstances. As a minimum, however, the assessment by directors must include a quarterly assessment of a profit and loss statement, balance sheet and cash flow statement of the company prepared for management purposes. This assessment should not be taken to define or limit in any way the directors' duty to prevent the company from trading while insolvent under s 588G.

RG 115.44 The directors must resolve within one month after the end of the relevant quarter, or within such other time as approved in writing by an officer of ASIC, that the company has met the criterion ASIC has used in the Class Order to determine if the company is in a sound financial condition: see RG 115.45 paras (a) and (c);

- (a) at the end of that quarter; and
- (b) at the time the resolution is made.

A copy of the management accounts used to make this resolution and a copy of the resolution itself must be given to a shareholder of the company or a person who is owed Approved Subordinated Debt, if a request for these documents is received in writing.

### ***Sound financial condition***

RG 115.45 The criterion ASIC has used in the Class Order to determine if a company is in a sound financial condition requires that a company has all the following characteristics:

- (a) its total liabilities do not exceed 70% of its total assets, excluding intangible assets. This ratio must be satisfied at the end of each quarter during the relevant financial year, at the end of the relevant financial year and at the time the resolution is made.

Intangible assets are excluded in the above ratio because ASIC will generally only give relief to companies which maintain a surplus of the type of assets which are less subjective in nature, can be recognised and traded separately, reliably measured and realised suddenly to enable timely payment of creditors.

If a company fails to meet this ratio but there are compensating factors such as the existence of deeds of cross guarantee with a financially sound holding entity (ie such that the combined ratio

of liabilities to tangible assets of the companies is less than 70%) ASIC may consider individual relief;

- (b) it makes a profit from ordinary activities after related income tax expense for either the relevant financial year or the immediately preceding financial year;
- (c) it is able to pay all its debts as and when they become due and payable each quarter during the relevant financial year.

*[Historical note: RG 115.45(b) amended 7/5/2003 by replacing the words “operating profit after abnormal items and tax” with the words “profit from ordinary activities after related income tax expense”.]*

RG 115.46 The financial conditions detailed in RG 115.45 paras (a) and (b) must be met on a consolidated basis for the company and its controlled entities where the company prepares consolidated financial information. At year end at the date the directors’ declaration is signed, the conditions must also be met on a consolidated basis for the company and its wholly-owned entities where the companies are parties to deeds of cross guarantee for the purposes of ASIC Class Order [CO 98/1418].

RG 115.47 For the purposes of the financial conditions detailed in RG 115.45 and RG 115.46, liabilities and assets must be determined in accordance with applicable accounting standards (whether or not they are otherwise applicable to the company or its controlled entities), subject to any adjustments in relation to subordinated debt outlined in RG 115.48. In particular, companies should refer to the requirements of accounting standard AASB 1033 “Presentation and Disclosure of Financial Instruments” in relation to the classification of items such as redeemable preference shares as liabilities or equity.

RG 115.48 For the purposes of the financial conditions detailed in RG 115.45 and RG 115.46, subordinated debt must be included as a liability unless:

- (a) the subordination agreement is substantially in the form specified in the ASIC Pro Forma 183 [PF 183];
- (b) the subordination agreement has been executed and lodged with ASIC prior to the commencement of the financial year and has been approved by ASIC in writing; and
- (c) the debt is not provided by a controlled entity of the company and is not funded directly or indirectly by the company or one of its controlled entities.

RG 115.49 The ability of the company to pay its debts as and when they fall due should also be evidenced by the directors making an unqualified solvency statement in the directors’ declaration (lodged as

part of the company's financial report with ASIC). A statement is not an unqualified solvency statement if the solvency of the company is expressed to be dependent on the financial support of a third party or is otherwise conditional or subject to provisos. For example, a statement which states that a company will be able to pay its debts as and when they become due and payable subject to the continuing financial support of the company's bankers or other entities, is not an unqualified solvency statement.

## **Financial report compiled by a Prescribed Accountant**

RG 115.50 In order that professional competence and due care are used in compiling the year end financial report, it must be compiled by a Prescribed Accountant and be in accordance with the Miscellaneous Professional Statement, "APS 9: Statement on Compilation of Financial Reports" ("APS 9") (or some corresponding compilation rules or guidelines approved by ASIC). The financial report must be accompanied by a compilation report prepared by the Prescribed Accountant in accordance with APS 9 (or its approved corresponding compilation rules or guidelines).

RG 115.51 A "Prescribed Accountant" is:

- (a) a member of the CPA Australia ("CPAA"), who is entitled to use the post-nominals "CPA" or "FCPA", and is subject to and complies with the CPAA's continuing professional development requirements; or
- (b) a member of The Institute of Chartered Accountants in Australia ("the ICAA"), who is entitled to use the post-nominals "CA", "ACA" or "FCA", and is subject to and complies with the ICAA's continuing professional education requirements; or
- (c) a member of the National Institute of Accountants ("the NIA"), who is entitled to use the post-nominals "MNIA", "FNIA", "PNA" or "FPNA" and is subject to and complies with the NIA's continuing professional education requirements; or

another accountant approved by ASIC for the purpose of compiling financial statements under this guide and who complies with such other requirements as may be specified by ASIC.

A Prescribed Accountant may be an employee of the company.

*[Historical note: RG 115.51 amended 6/2/2002 in para (a), by replacing "Australian Society of Certified Practising Accountants ('ASCPA')"* with "CPA Australia ('CPAA')"; *in para (b) by adding "CA" to the list of post-nominals; in para (c) by adding "'PNA' or 'FPNA,'" to the list of post-nominals.]*



RG 115.52 When considering an application for another accountant to be approved under in RG 115.51 ASIC will consider all relevant matters. The matters to be considered may include:

- (a) the rules of ethical conduct of any relevant professional body;
- (b) the disciplinary procedures of that body with respect to its members;
- (c) the academic qualifications required to become a member of that body;
- (d) the type and amount of experience required to become a member of that body;
- (e) the continuing professional development/education requirements applied by that body to its members; and
- (f) whether members of that body are required to comply with APS 9 (or some equivalent rules or guidelines approved by ASIC).

### **Lodging financial report**

RG 115.53 Relief from the audit requirements is only available if a company lodges its financial report and directors' report for the relevant financial year and the immediately preceding financial year within the deadlines in the Act or within such additional time as is approved in writing by an officer of ASIC. ASIC regards timely lodgment of the company's unaudited financial report and its directors' report as an essential requirement for audit relief.

RG 115.54 If the company takes advantage of audit relief, its directors must state in the directors' report for the relevant financial year, that they have:

- (a) relied on audit relief given by ASIC; and
- (b) complied with all the requirements of this relief.

### **Extension of time by an officer of ASIC**

RG 115.55 Certain requirements in the Class Order state that extensions of time may be approved in writing by an officer of ASIC. ASIC will only grant an extension of time to lodge Form 382 in rare and exceptional circumstances. Examples of circumstances which may be rare and exceptional circumstances for this purpose are as outlined in RG 115.39G.

*[Historical note: RG 115.55 was amended 5/4/2000 by changing the cross reference at the end of the para. It formerly read "RG 115.33".]*

RG 115.56 Applications for extensions of time must:

- (a) be made to the ASIC Regional Office in the state or territory in which the company's registered office is located;
- (b) confirm that the company and its directors have complied with all of the other conditions of the class order within the required time;
- (c) detail the rare and exceptional circumstances which the company believes ASIC should consider in assessing the company's application;
- (d) be made in writing and be signed by a director or by the company secretary; and
- (e) be accompanied by the completed form.

Late lodgment fees will apply to late forms whether or not an extension of time is granted.

## **Procedures for obtaining individual audit relief**

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RG 115.57 When a proprietary company meets the requirements of the Class Order, it does not have to apply to ASIC for individual relief (but must lodge Form 382 as explained in the editorial note to the Class Order).

RG 115.58 A proprietary company which is not exempted from the audit requirements by the Class Order may:

- (a) apply for individual relief with supporting documentation covering the matters set out in paragraphs RG 115.10–RG 115.56. Applications should be made in writing in accordance with a resolution of directors and a statement of the reasons for seeking relief (see s340); or
- (b) propose further class order relief if there are a number of companies in a similar position.

RG 115.59 The requirements of the Class Order indicate when relief may be given to a proprietary company. Any individual exemptions will generally contain most of the requirements set out in the Class Order. When companies do not comply with the requirements of the Class Order but meet ASIC's policy as set out in this guide in some other way, relief may be given on the basis of analogous requirements. Companies should state in their applications

for individual relief the requirements of the Class Order which they do not satisfy and the proposed analogous requirements.

RG 115.60 Applications for individual audit relief will not be accepted more than one month after the commencement of the financial year to which they relate except in rare and exceptional circumstances (such as the circumstances specified in subparagraphs (e)(i), (ii) or (iii) of the Class Order). This is consistent with ASIC's policy for extensions of time to make the relevant resolutions and lodge Form 382.

## **Transitional matter concerning previous version**

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*[Historical note: RG 115 amended 4/11/1998 by inserting the section entitled "Transitional matter concerning previous version" and RG 115.61–RG 115.65.]*

### **Background**

RG 115.61 For financial years ended on or before 30 June 1998, Class Orders [CO 96/1850] and [CO 97/567] continue to apply for proprietary companies obtaining audit relief. Class Order [CO 96/1850] applies to large proprietary companies and Class Order [CO 97/567] applies to small proprietary companies which are controlled by foreign companies. For financial years ended on or before 30 June 1998, reference should be made to the previous version of this guide, Superseded Policy Statement 115 [SPS 115] issued on 19 November 1996 and revised on 8 April 1998, and Superseded Policy Statement 58B *Reporting requirements — Registered foreign companies and Australian companies with foreign company shareholders* [SPS 58B] issued on 24/4/1997 and revised on 4/2/1998.

RG 115.62 For financial years ending on or after 1 July 1998, Class Order [CO 98/1417] provides audit relief for proprietary companies, and RG 115 as reissued on 4/9/1998 applies.

### **Statement as to use of order**

RG 115.63 Paragraph 53 of the previous version ([SPS 115]) indicates that the annual return form to be lodged by 31 January 1999 should contain a statement that the company has relied on an ASIC order providing audit relief and complied with all of the requirements for that relief. However, a new annual return form prescribed by the new s348 must be used and this makes no provision for such a statement to be included. As the statement mentioned in paragraph 53

of the SPS 115 is not a condition for relief under Class Order [CO 96/1850] or Class Order [CO 97/567], ASIC no longer requires this statement to be made in the annual return.

RG 115.64 These statements are still required to be made in the directors' report pursuant to condition (c) of Class Order [CO 96/1850] and Class Order [CO 97/567].

RG 115.65 For years ending on or after 1 July 1998, these statements are also required to be included in the directors' report under paragraph (v) of Class Order [CO 98/1417]. However, there is no requirement for a statement in the annual return under that class order or RG 115.