



## MEMO

To: Board of Directors  
From: Company Secretary  
Subject: **CEASING TO BE A DISCLOSING ENTITY**

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You may well be intrigued to know that when I lodged the company's annual accounts with ASIC recently they sent us an invoice for a late lodgment fee. On enquiry of ASIC they advised that according to their records the company is still a 'disclosing entity' – therefore the accounts should have been lodged within 3 months of the end of the last financial year whereas a non-disclosing entity has 4 months in which to lodge.

In response to my query of ASIC as to how we should notify them that we ceased to be a disclosing entity – because I have been unable to find any form to complete in this regard – ASIC advised that we must write a letter advising that we had ceased, the reasons therefore, and the applicable date – and they will note their records and cancel the late fee.

### **Legal Advice**

For your information, we have previously been advised by our lawyers that in their opinion the company ceased to be a disclosing entity as at 29 February last year when the convertible notes were converted into shares – the principal reasoning being that whilst we were a disclosing entity for prior years as a result of the convertible note raising through a prospectus and having 100 or more investors, the issue of the shares on conversion (on 29 February) was not of itself through a prospectus therefore we are no longer caught by the provisions (of having to issue half-yearly accounts, carry out 'continuous disclosure', lodge annual accounts within 3 months, etc). Our auditors accepted that position too.

### **Class Order 98/2016**

In drafting a suitable letter to ASIC (for them to change their records) I have subsequently come across ASIC Class Order 98/2016 which effectively covers this situation, and notes that if a company ceases to be a disclosing entity it need no longer comply with any of the disclosing entity obligations under the Act provided that:

- (a) it still complies, to the extent relevant, with the remainder of the financial reporting obligations, if any, in Chapter 2M; and
- (b) the directors, within 3 months of the end of the financial year that the company ceases to be a disclosing entity, resolve that they have no reason to believe that the



company will revert back to being a disclosing entity before the end of the current financial year.

### **Proposed Action**

With regard to the latter aspect, the directors have not so resolved – as our lawyers had not indicated this requirement to us in their earlier advices – so in my opinion the directors should just note the facts and confirm their actions at next board meeting.

In the meantime, I will send off the letter to ASIC asking them to note in their records that the company is no longer a disclosing entity and request that they cancel the late fee.

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#### **DISCLAIMER**

*The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.*