



MEMO

To: Board of Directors
From: Company Secretary
Subject: **LOST SHAREHOLDERS**

Sections 314 and 315 of the Corporations Act cover the requirement for public companies, and some private companies, to send an Annual Financial Report (AFR) to shareholders within 4 months of financial year-end.

However, mail is at times returned uncollected by shareholders, for a variety of reasons. ASIC Class Order 98/0101 states that in such cases the company can, instead of posting an AFR, send a brief letter (a 'Notice') to such 'lost' or 'uncontactable' shareholders stating that mail has been returned – for a period of 6 years – in lieu of an AFR. This Notice can cease after 6 years.

CO 98/0101

The Class Order reads:

PURSUANT to subsection 341(1) of the Corporations Law ("the Law") the AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION HEREBY MAKES AN ORDER in respect of each public company, registered scheme or disclosing entity ("the Entity") relieving the Entity from the obligation imposed by subsection 314(1) and section 315 to send a copy of the documents specified in subsection 314(1) to any person who the Entity has reasonable grounds to believe does not reside at the address shown in the register of members and whose current address the Entity has been unable to establish after the exercise of reasonable diligence (an "Uncontactable Member"), ON CONDITION THAT the Entity sends to the address shown in the register of each Uncontactable Member, at least once each year for a period of not less than 6 years, a notice stating that the dispatch of financial reports, directors' reports and auditors' reports to that person has been suspended but will be resumed forthwith on receipt of instructions to do so.

Rationale

There are said to be two reasons behind sending the lost holder Notice:

- so that companies can rely on CO 98/101 relief if they need to; and
- to show that the company has reasonable grounds to transfer the shares to ASIC after 6 years under s.1343.



Relief

CO 99/90 expressly relieves a company from the obligation under CO98/0101 to send a Notice where a shareholder has made an election under s.314 to not receive a printed AFR.

This, and the provisions under s.314(AB) allowing companies to adopt an 'opt in' approach to sending a printed AFR, actually mean that these days there are probably very few shareholders who become 'lost' and to whom an AFR should be sent.

Also, if s.314(1AA)(c) is complied with by notifying shareholders where they can access the annual report in the Notice of Meeting or in other communication, some consider that by sending the Notice of Meeting to lost holders each year is sufficient to comply with s.1343.

In light of all this, in my opinion, I consider that it is probably not worth the effort and cost to continue sending the Notice out every year, and I recommend that we cease this practice.

Notice of Meeting Obligation

The Notice provision in relation to the AFR does not, however, abrogate any responsibility to still send the Notice of Meeting to all shareholders – even when mail is returned – for as long as they remain on the register. Well, that's the theory, but I don't know that it's followed by many companies in practice once they are satisfied that a shareholder is really 'lost'.

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.