

21 December 2023

Markets Announcements Office
ASX Limited

Audit relief for non-wholly owned subsidiaries

Eagers Automotive Limited (ASX: APE) is pleased to announce that it has applied for, and obtained, relief from the Australian Securities and Investments Commission from the requirement for certain of its non-wholly owned subsidiaries to have their individual financial reports audited each year.

To be eligible for the relief, the subsidiaries must be party to the Eagers group Deed of Cross Guarantee.

The relief applies only to the individual subsidiaries and does not affect the financial reporting or audit obligations of the parent company, Eagers Automotive Limited.

A copy of the relief instrument is **attached**.

-ENDS-

Authorised for release by the Chairman and CEO.

For more information:

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**Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 340(1) – Order**

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this order under subsection 340(1) of the *Corporations Act 2001* (the *Act*).

Title

2. This order is ASIC instrument 23-0919.

Commencement

3. This instrument commences on the date that it is signed.

Orders

4. A company listed in the Schedule does not have to comply with any of the following in relation to the company's financial report for a financial year ending on or after 31 December 2023 (*relevant financial year*):

- (a) subsection 301(1) of the Act;
- (b) subparagraph 314(1)(a)(iii) of the Act;
- (c) paragraph 314(1)(b) of the Act to the extent that a concise report required to be given under that paragraph must include:
 - (i) a statement by an auditor referred to in paragraph 314(2)(c) of the Act; or
 - (ii) a statement that the auditor's report will be sent to a member free of charge if the member asks for it;

Note: See paragraph 314(2)(e) of the Act.

- (d) subsection 316(2) of the Act to the extent that it requires the company to send a member an auditor's report on its financial report.
5. The auditor (if any) of the company does not have to comply with subsection 314(3) of the Act in relation to the company's financial report for the relevant financial year.

Where this relief applies

6. The relief in sections 4 and 5 is available to a company and its auditor in relation to a relevant financial year where all of the following are satisfied as at 4 months after the end of the relevant financial year:

Nature of company

- (a) the company was for the relevant financial year (i.e. at balance date):
 - (i) a large proprietary company;
 - (ii) an Eagers Automotive Dealership;
 - (iii) majority owned and controlled by Eagers Automotive or a wholly-owned subsidiary of a large proprietary company that is majority owned and controlled by Eagers Automotive;
 - (iv) synchronised with the financial year of Eagers Automotive; and
 - (v) a party to the Eagers Automotive Deed of Cross Guarantee;
- (b) the company was not, at any time during the relevant financial year, any of the following:
 - (i) a disclosing entity;
 - (ii) a borrower in relation to a debenture;
 - (iii) the guarantor of such a borrower;
 - (iv) a financial services licensee;

Previous audits

- (c) the company has not had its financial report or financial statements audited for a financial year ending on or after 31 December 2023;

Resolutions by members and directors, and notice to ASIC

- (d) within the period commencing 3 months before the commencement of the relevant financial year and ending 4 months after the end of the relevant financial year, the following have occurred:
 - (i) all of the directors of the company have passed a unanimous resolution that the company's financial report for the relevant financial year should not be audited; and
 - (ii) all of the members of the company (irrespective of whether they hold voting or non-voting shares) have passed a unanimous resolution that the company's financial report for the relevant financial year should not be audited; and
 - (iii) unless the company relied on the relief available under this instrument in respect of the financial year immediately preceding the relevant financial year, a notice of the resolutions mentioned in subparagraphs (i) and (ii) signed by a director or company secretary has been lodged with ASIC using a modified ASIC Form 382;

Note: A 'modified ASIC Form 382' is an ASIC Form 382 as at the date of this instrument that has been modified by deleting the references to ASIC 'Corporations (Audit Relief) Instrument 2016/784' and replacing those references to 'ASIC Instrument 2023/0919 dated 18 December 2023'.

- (e) before passing the resolution referred to in subparagraph (d)(ii), the members of the company were provided, either in the notice of meeting or in material accompanying a proposed resolution under section 249A of the Act, with a statement by the directors stating whether, in their opinion, the cost of having the financial statements audited outweighs the expected benefits of the audit and setting out their reasons for that opinion;

Notice requiring an audit

- (f) the company has not been given written notice that the relief under this instrument is not to apply to the company for the relevant financial year by:
- (i) a director, at any time before the directors' statement for the relevant financial year is signed; or
 - (ii) members who control 5% or more of the votes which might be cast at a general meeting of the company (as calculated as at the close of business on the day before the members serve the notice), at any time up to:
 - (A) one month before the end of the relevant financial year; or
 - (B) a later time if ASIC has given written notice to the company approving that time; or
 - (iii) any person who is owed approved subordinated debt by the company, at any time up to:
 - (A) one month before the end of the relevant financial year; or
 - (B) a later time if ASIC has given written notice to the company approving that time; or
 - (iv) ASIC;

Solvency declarations

- (g) the directors' declarations made under subsections 295(4) and (5) of the Act in respect of each financial year which ended before, and including, the relevant financial year contained unqualified statements that in the directors' opinion there were, when the declaration was made, reasonable grounds to believe that the company would be able to pay its debts as and when they become due and payable;
- (h) all directors' statements made under the former subsection 301(5) of the Law in respect of all years ending on or after 18 November 1996 (if any) contained unqualified statements that in the directors' opinion there were, when the statement was made, reasonable grounds to believe that the company would be able to pay its debts as and when they fell due;

Procedures to assess solvency

- (i) the company has had procedures in place from the commencement of the relevant financial year which enable all the directors to assess whether the company is able to pay all its debts as and when they become due and payable (including, without limiting the generality of this requirement, any debts for which the company may become liable by virtue of the Eagers Automotive Deed of Cross Guarantee or any other deed of cross guarantee in ASIC Pro Forma 24) and the nature and frequency of those procedures were adequate for that purpose, having regard to the business and financial circumstances of the company;

Quarterly management accounts

- (j) to enable the directors to make the resolution required in paragraph (k), the directors of the company have caused management accounts covering the company to be prepared for:
 - (i) where the relevant financial year ends on 31 December 2023 - the quarter ending 31 December 2023 – within one month after the end of the quarter; or
 - (ii) where the relevant financial years ends after 31 December 2023 – each quarter during the relevant financial year:
 - (A) within one month after the end of the quarter; or
 - (B) by a later time if ASIC has given the company written notice approving that time.
- (k) within one month after the end of the relevant quarter in paragraph (j), or by a later time if ASIC has given the company written notice approving that time:
 - (i) the directors have considered:
 - (A) the management accounts prepared for that quarter; and
 - (B) all information that has become available since the end of the quarter about the company’s affairs which is material to the assessment of the management accounts for that quarter; and
 - (ii) having regard to the management accounts and that information, the directors have resolved that, at the end of the quarter and at the time the resolution was made that the company was able to pay its debts as and when they become due and payable;

Annual financial requirements

- (l) for either the relevant financial year or the financial year immediately preceding the relevant financial year, the company made a profit after related income tax expense on the following bases:

- (i) a single entity basis;
 - (ii) if the company is required under the Act or another ASIC order under section 340 or 341 of the Act to prepare consolidated financial statements, on a consolidated basis for the company and its controlled entities;
- (m) assets, liabilities, and profit after related income tax expense for the purposes of paragraphs (l) have been determined in accordance with accounting standards (as if the company, any controlled entities and the group were reporting entities) except that liabilities must include any unapproved subordinated debt and may exclude approved subordinated debt;

Compilation of the financial reports

- (n) the directors of the company have caused the financial report for the relevant financial year of the company to be compiled by a prescribed accountant and reasonably believe that the accountant has undertaken the compilation in accordance with APES 315 *Compilation of Financial Information (APES 315)*;
- (o) a compilation report that the directors of the company reasonably believe has been prepared by the prescribed accountant in accordance with APES 315 is attached to the relevant financial report and is included with all copies of the relevant financial report distributed to members, lodged with ASIC or provided to any other person;

Lodgement of financial reports

- (p) the financial report and directors' report for the relevant financial year:
 - (i) substantially comply with Chapter 2M of the Act; and
 - (ii) are lodged with ASIC in accordance with subsection 319(1) and paragraph 319(3)(b) of the Act;

Statement in directors' report

- (q) in the directors' report for the relevant financial year, the directors state that the financial report for that relevant financial year has not been audited, in reliance on this instrument, and that the requirements of this instrument have been complied with;

No proposed modified auditor's report

- (r) no registered company auditor has indicated to the company, any of its directors or other officers that, if the financial report of the company for the relevant financial year were audited in accordance with Division 3 of Part 2M.3 of the Act, the auditor's report may contain a modified opinion within the meaning of paragraph 5(b) of Auditing Standard ASA 705 *Modifications to the Opinion in the Independent Auditor's Report*, and there are no material disagreements or unresolved issues as between the company and

any such auditor in relation to accounting treatments or amounts that may appear in the financial report of the company for the relevant financial year;

- (s) no registered company auditor has indicated to Eagers Automotive, any of its directors or other officers that the auditor's report in respect of the financial report of Eagers Automotive for the relevant financial year may contain a modified opinion within the meaning of paragraph 5(b) of Auditing Standard ASA 705 *Modifications to the Opinion in the Independent Auditor's Report*, and there are no material disagreements or unresolved issues as between Eagers Automotive and any such auditor in relation to accounting treatments or amounts that may appear in the financial report of the company for the relevant financial year;

Compliance with conditions

- (t) the company has complied with each of the conditions in section 7 as they apply to the company.

Conditions

7. *Ceasing to rely on relief*

- (1) If a company:
- (a) relies on the relief available under sections 4 or 5 in respect of a financial year; and
 - (b) does not rely on that relief in respect of the immediately following financial year (*first non-reliance year*);

the company must lodge with ASIC a notice signed by a director or company secretary that the company has ceased to rely on the relief using a modified ASIC Form 396.

Note: A 'modified ASIC Form 396' is an ASIC Form 396 as at the date of this instrument that has been modified by deleting the references to ASIC 'Corporations (Audit Relief) Instrument 2016/784' and replacing those references to 'ASIC Instrument 2023/0919 dated [insert date]'.

- (2) A notice required under subsection (1) must be lodged during the period commencing 3 months before the commencement of the first non-reliance year and ending 4 months after the end of the first non-reliance year.

Requests for management accounts

- (3) If:
- (a) a member or a person who is owed approved subordinated debt requests, in writing, a copy of the management accounts mentioned in paragraphs 6(j) or a copy of the directors' resolution mentioned in paragraph 6(k) for a quarter specified in the request; and
 - (b) the request is made within 7 years after the end of the quarter to which the management accounts or directors' resolution relates;

the company must make a copy of the management accounts or the resolution (as the case may be) available to that person, free of charge, at the company's registered office or by sending these documents by pre-paid ordinary post:

- (c) within 14 days after receiving the request or 14 days after the resolution is passed, whichever is later; or
- (d) by a later time if ASIC has given the company written notice approving that time.

Disclosure of this relief

- (4) Eagers Automotive must make an announcement on the markets announcement platform operated by ASX Limited ACN 008 624 691 explaining the relief granted by this instrument and attaching of copy of this instrument within 14 days of the date of this instrument.
- (5) Eagers Automotive must include a statement in the notes to its financial report for each relevant financial year explaining the relief granted by this instrument and provide details of the company's listed in the Schedule that have or have not relied on the relief provided in sections 4 and 5 for the relevant financial year.
- (6) The company must include a statement in the notes to any financial report it lodges with ASIC in accordance with paragraph 6(p) explaining the relief granted by this instrument and details of the companies that are parties to the Eagers Automotive Deed of Cross Guarantee.

Reliance on ASIC Corporations (Wholly-owned Companies) Instrument 2016/785

- (7) If the company is a wholly-owned subsidiary of a large proprietary company that is majority owned and controlled by Eagers Automotive (a partly-owned company) and the company and partly owned company rely on the relief under this instrument for the relevant financial year – the company must not rely on relief under *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* for the relevant financial year.

Interpretation

- 8. In this instrument:

Act means the *Corporations Act 2001*.

approved subordinated debt means, in relation to a company, debt of the company which:

- (a) has been subordinated under an agreement which has:
 - (i) been executed by the company and the creditor and lodged with ASIC before the commencement of the relevant financial year; and

- (ii) been approved by ASIC for the purposes of this instrument; and
- (b) is not provided by an entity controlled by the company and is not funded directly or indirectly by the company or one of its controlled entities.

borrower in relation to debentures means a company that is or will be liable to repay money under a debenture, but does not include a company that only has debentures on issue that were issued or allotted:

- (a) by excluded issues to which paragraph 66(2)(d) of the Law applied as that Law stood before 13 March 2000; or
- (b) because of offers which did not need disclosure to investors under Part 6D.2 of the Act because of subsection 708(1) of the Act.

control has the same meaning as in Accounting Standard *AASB 10 Consolidated Financial Statements*.

Eagers Automotive means Eagers Automotive Limited ACN 009 680 013.

Eagers Automotive Dealership means where the company's primary business is the ownership and operation of motor vehicle dealerships for the buying and selling of new or used motor vehicles in Australia or New Zealand.

Eagers Automotive Deed of Cross Guarantee means the deed of cross guarantee dated 21 April 2008 as amended or varied from time to time.

group has the same meaning as in Accounting Standard *AASB 10 Consolidated Financial Statements*.

Law means in relation to a company, the former Corporations Law of the State or Territory under which the company was registered immediately before the commencement of the Act; and includes a separate reference to the former Corporations Law of each other State and Territory.

management accounts means accounts which include an income statement, a statement of changes in equity, balance sheet and cash flow statement.

prescribed accountant means each of the following:

- (a) a member of CPA Australia (*CPAA*) who:
 - (i) is entitled to use the post-nominals "CPA" or "FCPA"; and
 - (ii) is subject to the CPAA's continuing professional development requirements; and
 - (iii) at or about the time of the member's most recent renewal of membership, has confirmed in writing to CPAA that he or she complies with the CPAA's continuing professional development requirements;

- (b) a member of Chartered Accountants Australia and New Zealand (*CA ANZ*) who:
 - (i) is entitled to use the post-nominals “CA” or “FCA”; and
 - (ii) is subject to the CA ANZ’s continuing professional education requirements; and
 - (iii) at or about the time of the member’s most recent renewal of membership, has confirmed in writing to CA ANZ that he or she complies with the CA ANZ's continuing professional education requirements;
- (c) a member of the Institute of Public Accountants (*IPA*) who:
 - (i) is entitled to use the post-nominals “AIPA”, “MIPA”, or “FIPA”; and
 - (ii) is subject to the IPA’s continuing professional education requirements; and
 - (iii) at or about the time of the member’s most recent renewal of membership, has confirmed in writing to the IPA that he or she complies with the IPA’s continuing professional education requirements;
- (d) another accountant approved by ASIC for the purpose of compiling financial reports under this instrument and who reasonably believes that he or she complies with such requirements as may be specified by ASIC.

quarter means one of the periods of no more than 3 months into which the relevant financial year of a company is divided, as determined by the directors of the company.

unapproved subordinated debt means any subordinated debt which is not approved subordinated debt.

Dated 18 December 2023



Signed by Kyle Wright
Senior Lawyer
as a delegate of the Australian Securities and Investments Commission

Schedule

ACM Autos Holdings Pty Ltd ACN 621 081 552
ACM Autos Pty Ltd ACN 121 604 082
BASW Pty Ltd ACN 601 452 199
Big Rock 2005 Pty Ltd ACN 112 854 403
Boonarga Welding Pty Ltd ACN 099 480 903
Bradstreet Motors Holdings Pty Ltd ACN 602 181 386
Bradstreet Motors Pty Ltd ACN 061 172 183
Cardiff Car City Holdings Pty Ltd ACN 602 181 751
Cardiff Car City Pty Ltd ACN 062 072 299
City Auto (2016) Holdings Pty Ltd ACN 611 922 993
City Auto (2016) Pty Ltd ACN 611 928 968
EACAB Pty Ltd ACN 652 679 000
AP Townsville Pty Ltd ACN 600 279 927
WS Vehicle Sales Pty Ltd ACN 616 472 729
WS Motors Pty Ltd ACN 608 791 804
FR Ireland Pty Ltd ACN 009 983 126
Eagers MD Pty Ltd ACN 009 727 753
Eagers TACT Pty Ltd ACN 658 497 299
EASST Pty Ltd ACN 651 942 264
Graham Cornes Motors Pty Ltd ACN 008 123 993
Grand Autos 2005 Pty Ltd ACN 112 854 878
Highland Autos Pty Ltd ACN 121 604 297
IB MD Pty Ltd ACN 169 210 173
Maitland City Motor Group Holdings Pty Ltd ACN 602 179 000
Maitland City Motor Group Pty Ltd ACN 112 526 431
MCM Autos Pty Ltd ACN 121 606 862

Motors Group (Glen Waverley) Pty Ltd ACN 164 997 228

OPM (2012) Holdings Pty Ltd ACN 623 139 177

OPM (2012) Pty Ltd ACN 158 377 452

PT (2013) Pty Ltd ACN 162 030 015

Sabalan Holdings Pty Ltd ACN 602 181 117

Sabalan Pty Ltd ACN 002 698 188

South West Queensland Motors Pty Ltd ACN 600 279 589