



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 209

Resignation, removal and replacement of auditors: Update to RG 26

May 2013

About this paper

This consultation paper sets out ASIC's proposals for updating our guidance in Regulatory Guide 26 *Resignation of auditors* (RG 26) on the resignation, removal or replacement of:

- auditors of public companies (s327 of the *Corporation Act 2001* (Corporations Act));
- auditors of registered managed investment schemes and compliance plans (s331AC and 601HH of the Corporations Act, respectively);
- auditors of Australian financial services (AFS) licensees (s990F and 990G of the Corporations Act); and
- auditors of credit licensee trust accounts (see regs 19(4)(d) and 19(4)(e) of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations)).

This paper attaches a draft updated version of RG 26 (draft updated RG 26), renamed *Resignation, removal and replacement of auditors*, and seeks feedback on our proposed guidance.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 30 May 2013 and is based on legislation and regulations as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments and reasons supporting your comments in each response will help us develop our guidance on the resignation, removal and replacement of auditors. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 30 August 2013 to:

Doug Niven
 Senior Executive Leader
 Financial Reporting & Audit
 Australian Securities and Investments Commission
 Level 5, 100 Market Street
 Sydney, NSW 2000
 email: policy.submissions@asic.gov.au

What will happen next?

Stage 1	30 May 2013	ASIC consultation paper released
Stage 2	30 August 2013	Comments due on the consultation paper and draft updated regulatory guide
Stage 3	31 January 2014	Updated regulatory guide released

A Background to the proposals

Key points

Regulatory Guide 26 *Resignation of auditors* (RG 26), which was published in June 1992, sets out ASIC's existing guidance on the resignation of public company auditors. We are consulting in this area to inform us in deciding whether to fundamentally change our approach.

In addition, we are considering revisions to RG 26 to provide guidance on the resignation, removal and replacement of auditors of entities other than public companies.

This consultation paper asks for your feedback on our fundamental approach and on the draft updated RG 26, which is attached to this paper.

Legislative and policy developments

- 1 Regulatory Guide 26 *Resignation of auditors* (RG 26) sets out ASIC's existing guidance on the policies and principles that influence us in the exercise of our power to consent to the resignation of public company auditors under s329(6) of the *Corporations Act 2001* (Corporations Act).
- 2 Since RG 26 was published in June 1992, there has been significant experience with the operation of our approach to consenting to the resignation of auditors of public companies. This consultation paper seeks views on whether that approach should be fundamentally changed.
- 3 Since June 1992, there have also been a number of relevant legislative amendments, mainly as a result of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (CLERP 9 Act), the *Corporations Amendment (Corporate Reporting Reform) Act 2010* and the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*. These amendments include:
 - (a) measures designed to improve the reliability and credibility of financial statements through enhanced auditor independence (Div 3 of Pt 2M.4 of the Corporations Act);
 - (b) the requirement for auditors to meet a general standard of independence and make an annual written declaration that they have maintained their independence (s307C of the Corporations Act);
 - (c) the introduction and enhancement of restrictions on certain employment and financial relationships in relation to auditor independence (s324CH);

- (d) the requirement for auditors of listed companies and listed registered managed investment schemes (registered schemes) to rotate after five successive financial years (and up to seven successive financial years if ASIC gives relief or, as from 25 July 2012, if the directors give approval) (Div 5 of Pt 2M.4);
- (e) auditors being allowed to incorporate into an authorised audit company (Div 1 of Pt 9.2A); and
- (f) the introduction of a three-tiered differential reporting framework exempting small companies limited by guarantee from reporting and auditing requirements and providing other companies limited by guarantee with streamlined assurance requirements and simplified disclosures in the directors' report.

Note: References in this paper to sections (s), divisions (Divs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

- 4 Auditor independence is a fundamental principle in the guidance currently contained in RG 26. The relevant provisions of the Corporations Act, National Consumer Credit Protection Regulations 2010 (National Credit Regulations) and *National Consumer Credit Protection Act 2009* (National Credit Act) are designed to prevent an auditor from being unduly influenced by those persons charged with the governance of an entity, and to protect those who rely on the auditor's report.
- 5 The policies underlying our decision whether to consent to the resignation, removal or replacement of an auditor have not significantly changed. However, there have been policy developments that affect our existing guidance in RG 26.
- 6 Hence, it is appropriate to review, within the context of these legislative requirements, the policy underlying RG 26 and our approach to consenting to the resignation, removal and replacement of auditors.
- 7 We have prepared and attached to this paper a draft updated version of RG 26—renamed *Resignation, removal and replacement of auditors*. This draft guidance has been prepared on a basis consistent with the current policy to more clearly explain how that approach is applied by ASIC. It is intended to facilitate comments on the appropriateness of ASIC's approach, as part of our consultation process, and to enable us to review whether to fundamentally change that approach or specific parts of that approach.
- 8 The draft updated RG 26 covers all the relevant provisions of the Corporations Act and National Credit Regulations that relate to the resignation, removal and replacement of auditors, whereas the existing RG 26 only addresses the resignation of public company auditors under s329.
- 9 The draft updated RG 26 includes updates to our existing guidance, including:

- (a) specifying the timing of the lodgement of applications for consent and when auditor resignations, removals or replacements take effect;
- (b) addressing the issue of auditor resignations for single member public companies where the company has elected not to hold an annual general meeting (AGM) in accordance with s250N(4);
- (c) addressing the issue of auditor resignations and removals arising from the auditor rotation requirements of Div 5 of Pt 2M.4; and
- (d) providing further examples of factors that will generally influence us in considering whether 'early consent circumstances' exist in our assessment of applications for auditor resignations, removals and replacements.

10 As a minimum, we consider that registered company auditors, professional accounting associations, and entities requiring an audit under the Corporations Act and National Credit Regulations would benefit from an update of the existing guidance in RG 26 that reflects these legislative and policy developments.

11 In reviewing our approach to auditor resignations, removals and replacements within the context of the existing legislation, it may be relevant to take into account approaches in other jurisdictions: see the appendix for further details about international requirements.

Your feedback

12 We are interested in any feedback you have on our approach and on the draft updated RG 26: see the attachment to this paper. We will take your comments into account when we finalise our guidance.

B Our proposed update to RG 26

Key points

We are considering whether to fundamentally change our current approach to consenting to the resignation and removal of auditors (see proposals and issues B1–B6).

If we retain our fundamental approach, we propose to include additional guidance in the updated RG 26 on:

- whether early consent circumstances exist and our approach when there is non-payment of audit fees, a change in the audit firm structure or non-compliance with the auditor rotation requirements (see proposals B7–B11); and
- our approach to consent for entities other than public companies and for single member public companies (see proposals B12–B14).

Should we change our fundamental approach to the resignation and removal of auditors?

Overall approach to resignations

Proposal

B1 We propose to issue an updated RG 26 to provide guidance on the resignation, removal and replacement of auditors that is consistent with our guidance in the existing RG 26. The attached draft updated RG 26 has been prepared on a basis consistent with our existing approach.

Your feedback

B1Q1 Do you have any comments or concerns about ASIC's current approach to the resignation and removal of auditors within the context of the legislative requirements? Please outline the nature of any suggested change, the benefits and costs of any change, and the reasons for the change?

B1Q2 Do you have any comments on the existing legislative requirements relating to the resignation and removal of auditors?

Rationale

13 The attached draft updated RG 26 takes into account the legislative changes since the guide was issued in 1992 within the context of our existing approach to the resignation, removal and replacement of auditors. While the draft guide provides clearer and more consistent guidance on our current

approach to the resignation, removal and replacement of auditors, we are considering whether that approach should be changed. In this regard, we would like to understand the nature of any suggested change, the benefits and costs of any change, and the reasons for the change.

Timing of resignations

Issue

- B2** Our current approach is that the resignation of an auditor of a public company should normally occur at the AGM or within one month after the lodgement of the auditor's report for registered schemes.

Your feedback

- B2Q1** Do you agree that the resignation of auditors should normally take effect at the AGM for public companies and within one month after the lodgement of the auditor's report for entities that do not hold AGMs? Does this timing create any practical difficulties?
- B2Q2** Do you agree that the resignation or removal of auditors of registered schemes and compliance plans should normally take effect within one month after the auditor's report is lodged? Does this timing create any practical difficulties?
- B2Q3** Do you agree with the underlying principles for the normal timing of the resignation of an auditor outlined in draft updated RG 26.14–RG 26.20? Should these underlying principles be changed, particularly taking into account the introduction of the legislative requirements for auditor independence since our guidance was first developed, which are additional to the professional independence requirements? Should there be additional or alternative underlying principles for the timing of resignations?
- B2Q4** In your experience, what proportion of resignations of auditors are initiated by the auditor and what proportion are initiated by the company?
- B2Q5** Should ASIC consent be given to a resignation at any time of the year? Should there be exemptions, for example, when ASIC is made aware that there is a disagreement between the auditor and the management concerning an accounting treatment or other aspect of the company's reporting obligations? Should other conditions be considered—for example, taking into account the legislative provisions for the removal of auditors?

- B2Q6 Should audit committees or directors control the timing of the resignation of auditors? To what extent should audit committees or the board of directors be regarded as representing the interests of members in relation to a change of auditor? To what extent should audit committees and directors be responsible for ensuring that audit quality is maintained?
- B2Q7 Are there practical issues in using the removal provisions for a public company to change auditors at any time during the year, given the costs associated with the requirement to hold a general meeting?
- B2Q8 Do you have any comments on whether there should be disclosure to the market about the resignation of an auditor, similar to the approach in other countries where regulator consent to the resignation is not generally required and auditor resignations can occur at any time? Please provide reasons supporting your comments.

Rationale

- 14 Our current guidance largely concerns the normal timing for the resignation of auditors of public companies, and ensuring that auditors are not replaced because of a genuine view that the proposed reporting by a company is inappropriate.
- 15 Our concern has been to ensure that:
- (a) the independence of the audit function is preserved;
 - (b) the effective completion of the audit is not affected; and
 - (c) the statutory right of members to decide on the appointment of new auditors at an AGM is protected.
- 16 Further information on the underlying principles appears in the draft updated RG 26 at RG 26.14–RG 26.20.
- 17 For public companies, the current guidance also takes into account the legislative provisions that enable a company to remove the auditor at any time of the year. This is subject to the company obtaining a resolution of members at a general meeting.
- 18 Alternative views might include that audit committees and directors should normally control the timing of the resignation of auditors, given that:
- (a) while directors are responsible for the overall management of an entity, audit committees and directors also represent the interests of members. Audit committees and directors play an important role in ensuring audit quality, given that a quality audit is important to the quality of financial reporting. They also have obligations under the Corporations Act in relation to auditor independence, given that the directors' report must

include the auditor's independence declaration and a statement by the directors as to whether non-audit services compromised the auditor independence requirements of the Act; and

- (b) transparency to the market concerning a change in auditor and market forces could assist in ensuring that auditors are not replaced in inappropriate circumstances or at inappropriate times.

19 It may be argued that we should only withhold consent to the resignation of an auditor if we are made aware of circumstances where this would be inappropriate.

20 The approach in Australia differs from that in other countries, as outlined in the appendix to this consultation paper.

21 Our current approach for registered schemes is outlined in Regulatory Guide 136 *Managed investments: Discretionary powers and closely related schemes* (RG 136). We will normally consent to the resignation of a scheme auditor within one month after the auditor's report is lodged. This approach is similarly intended to ensure that:

- (a) the independence of the audit function is preserved;
- (b) the effective completion of the audit is not affected; and
- (c) the auditor continues to hold office after reporting so that they can answer any questions from members of the registered scheme relating to the audit.

Identifying a replacement auditor

Issue

- B3** Our current approach is to consent to the resignation of an auditor of a public company only if a replacement auditor has been identified by the company.

Your feedback

- B3Q1 Should ASIC's consent to the resignation of an auditor of a public company be conditional on the company having obtained a possible replacement auditor? If not, how should ASIC comply with its obligation to appoint an auditor? In particular, how should ASIC choose a replacement auditor?
- B3Q2 If we require an incumbent auditor to continue in office, or if we appoint a new auditor, does this create a potential conflict with the obligations of auditors under the auditing standards concerning the acceptance and continuance of audit engagements? If so, how should such conflicts be addressed?

Rationale

- 22 Our current approach is intended to ensure that the market continues to be properly informed through independently audited financial reports. The importance of an independent audit is underscored by the requirement in s327E of the Corporations Act for ASIC to appoint an auditor if a company does not do so.
- 23 An alternative view is that the inability of an entity to obtain a replacement auditor would provide important information to the market about the company. The requirement for an incumbent auditor to continue in office may result in a conflict with the requirements in relation to the acceptance and continuance of audit engagements under auditing standards. Further, auditors may be required to continue in office when:
- (a) there is a disagreement with management, including a disagreement that can only be resolved by issuing a modified audit opinion; or
 - (b) there may be limited prospects of recovering audit costs—the auditor may need to consider whether to apply for the company to be wound up.
- 24 If we were to consent to the resignation of auditors of public companies without a company having identified a replacement auditor, and the company failed to appoint an auditor, we would be interested in any views about how ASIC should comply with its obligations to appoint an auditor under s327F of the Corporations Act. Feedback on the criteria that we should apply in selecting an auditor, if no appropriate auditor chooses to accept an appointment, would be particularly useful.

Commencement of work by a proposed auditor

Issue

- B4** Our current approach is that a proposed new auditor of a public company should not commence audit work until after we have consented to the resignation of the incumbent auditor.

Your feedback

- B4Q1 There are instances when a proposed new auditor of a public company commences audit work without the company first seeking our consent to the resignation of the incumbent auditor. In such circumstances, should we consent to the resignation of the incumbent auditor at any time of the year to avoid any potential duplication of costs if the incumbent auditor were required to continue in office?
- B4Q2 Are there any other practical difficulties or implications in planning a change in auditor?

Rationale

- 25 Public companies should plan to obtain our consent to the resignation of an auditor. Giving automatic consent, if a proposed new auditor of a public company commences audit work without the company first seeking our consent to the resignation of the incumbent auditor, may undermine the intent of the legislative requirement for our consent. If a proposed new auditor commences work, and our consent is not given, the company may incur unnecessary costs.
- 26 There may be instances where an existing auditor is not performing adequately and a company wants to ensure an effective and timely audit without first seeking our consent. In such cases, the proposed auditor also has obligations under auditing standards to perform certain acceptance procedures and should communicate with the incumbent auditor. In other cases, incumbent auditors and companies may have overlooked the need to obtain our consent. Proposed new auditors may have not performed client acceptance procedures required by auditing standards and determined whether they have been appointed.

Audit firm mergers and new authorised audit companies

Issue

- B5** Our current approach is that the resignation of an auditor of a public company following a merger of audit firms or the replacement of the audit firm by an authorised audit company should occur at the next AGM of the company.

Your feedback

- B5Q1** Do the normal requirements for the timing of the resignation of auditors of public companies cause practical difficulties for audit firms that merge or are replaced by an authorised audit company? Should these practical difficulties be addressed and, if so, how? Please provide your reasons.

Rationale

- 27 Where audit firms merge, only one of the firms can be continuing. If the other firm or firms are to be dissolved, the audit appointment vests in each of the individual former partners of the firm that were registered company auditors. Similar circumstances arise when an audit firm is replaced by an authorised audit company.
- 28 The Corporations Act contains no transitional provisions for such circumstances. Our current approach is to normally consent to resignation at the next AGM of a public company to provide members with an opportunity

to decide on the replacement auditor. The result is that the firm or firms to be dissolved must be continued for up to 12 months.

Other matters

Issue

B6 We are seeking to collect information on the costs and benefits of any possible changes to our current approach and are interested in any other concerns with our current approach.

Your feedback

B6Q1 If you suggest any changes to our current approach, what are the costs and benefits flowing from these changes?

B6Q2 Do you have any other concerns with our existing guidance, as it is outlined in the draft updated RG 26?

Rationale

29 In deciding whether to change our current approach, we are interested in any other relevant information such as costs and benefits of changes. We are also interested in any other comments that you may have in connection with our current guidance.

Consenting to resignations, removals and replacements if our current fundamental approach is retained

Early consent circumstances

Proposal

B7 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose to include examples of ‘early consent circumstances’, where we will give consent to the resignation of an auditor of a public company other than at the AGM, or to the resignation, removal or replacement of an auditor of another entity other than within one month after the audit report is lodged: see Table 2 and Table 3 of the draft updated RG 26.

Your feedback

B7Q1 Should the draft updated RG 26 include further examples of early consent circumstances? Please outline any such examples and the reasons why they should be included in the updated RG 26.

B7Q2 Are there any practical implications of the timing of the resignation of auditors of companies that are responsible entities and their related schemes?

B7Q3 Do you have any other suggestions about what may or may not constitute early consent circumstances? Please provide reasons supporting each of your comments.

B7Q4 Do you have any comments on the proposed replacement of the term 'exceptional circumstances' in the current RG 26 with 'early consent circumstances' in the draft updated RG 26?

Rationale

- 30 If we retain our current approach to the timing of resignations of auditors, we are interested in whether there are common circumstances that should be given as examples of early consent circumstances.
- 31 In the context of the draft updated RG 26, early consent circumstances exist when we are satisfied that it is impractical or inappropriate for an auditor to conclude their audit.
- 32 In the appendix of the draft updated RG 26, we have proposed some examples of factors that may influence us in considering whether early consent circumstances exist in our assessment of whether to consent to an application for the resignation, removal or replacement of an auditor. These examples are not exhaustive and we propose that our consent will be determined on a case-by-case basis: see Table 2 and Table 3 of draft updated RG 26.
- 33 We will make determinations on a case-by-case basis to ensure that the independence and integrity of an audit is preserved.
- 34 Based on legislative updates and the knowledge gained from determinations made since the existing RG 26 was published, we have expanded on the original examples that we may generally consider to be early consent circumstances. We have also provided examples of, and explanations about, situations that we may generally *not* consider to be early consent circumstances.

Non-payment of audit fees

Proposal

- B8 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that non-payment of audit fees should be one of the factors indicating that early consent circumstances *do not* exist: see Table 3 of the draft updated RG 26.

Your feedback

- B8Q1 Do you have any comments on whether unpaid audit fees could be perceived to be a conflict of interest and therefore auditors should be able to apply for consent to resign because of a threat to their independence?
- B8Q2 Should auditors, in this situation, be permitted to resign without a replacement auditor being nominated? Please provide reasons supporting each of your comments.

Rationale

35 APES 110 *Code of ethics for professional accountants* states at paragraph 290.223 that:

A self-interest threat *may be* created if fees due from an Audit Client remain unpaid for a long time, especially if a significant part is not paid before the issue of the audit report for the following year.

36 It would appear that APES 110 considers fees that have been outstanding for a long time may be a potential threat to auditor independence around the time when the audit report for the next financial year is due.

37 The issue of outstanding fees is of a commercial nature which can be resolved by communicating with the client.

Changes in the audit firm or practice structure**Proposal**

- B9 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that outgoing auditors should bring to our attention changes in the audit firm or practice structure as the result of a merger, acquisition or dissolution: see draft updated RG 26.86–RG 26.87.

Your feedback

- B9Q1 Do you agree with our proposed requirement for outgoing auditors to provide information on changes in the firm or practice structure as a result of mergers, acquisitions and dissolutions? Please provide reasons supporting your comments.

Rationale

38 The CLERP 9 Act enabled auditors to incorporate into an authorised audit company under Div 1 of Pt 9.2A of the Corporations Act. However, the CLERP 9 Act did not include any provisions to facilitate a changeover from an audit firm to an authorised audit company in relation to an audit, and therefore s329(5) would apply.

- 39 If an audit firm that is a partnership is dissolved, or has been dissolved, before our consent to the auditor's resignation or removal is obtained, s324AB(1)–(2) and regs 7.8.15(2)–(3) of the Corporations Regulations cause the audit to vest in each member of the firm that is a registered company auditor. Therefore, we propose that s329(5) will apply to each registered company auditor of the firm.

Auditor rotation

Proposal

- B10** Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that:
- (a) if the auditor of a listed company or listed registered scheme is ineligible to continue as auditor under the auditor rotation requirements in s324DA, and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2) (see draft updated RG 26.77–RG 26.79); and
 - (b) if a company is an authorised deposit-taking institution (ADI) and the auditor is ineligible to continue as auditor because they would be in contravention of the rotation requirements of paragraph 89 of Prudential Standard CPS 510 *Governance*, made under the *Banking Act 1959*, and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2) (see draft updated RG 26.80–RG 26.81).

Your feedback

B10Q1 Do you have any comments on our regulatory approach to the resignation of auditors that are ineligible to continue because of auditor rotation requirements?

Rationale

- 40 Auditor rotation is one of the auditor independence requirements in Div 5 of Pt 2M.4, introduced as part of the CLERP 9 Act. The auditor rotation requirements specify a limited term of five successive financial years (and up to seven successive financial years, in certain circumstances, if ASIC gives relief or, as from 25 July 2012, if the directors give approval), during which an individual auditor can play a significant role in the audit of a listed company or listed registered scheme. Paragraph 89 of Prudential Standard CPS 510 imposes a time limit of five years for the individual auditor of an ADI.
- 41 The rotation requirements are applicable to an individual auditor who plays a significant role in the audit. If the auditor is ineligible to continue as auditor because they would be in contravention of the rotation requirements, and

there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign.

- 42 The policy basis for requiring auditor rotation is that auditor independence will enhance the reliability and credibility of financial reports. Extending the auditor rotation period is dealt with in Regulatory Guide 187 *Auditor rotation* (RG 187).

Other matters

Issue

- B11** We are seeking to collect information on any other changes that should be made within the context of our current fundamental approach if that approach is retained.

Your feedback

- B11Q1 Do you have any other suggestions for changes to the draft updated RG 26 in the context of our current approach?

Rationale

- 43 We are also interested in any other comments that you may have in connection with our current approach.

Auditor resignations, removals and replacements under other legislation if our current fundamental approach is retained

Proposal

- B12** We propose to incorporate guidance in the updated RG 26 on our approach to giving consent or approval under all the requirements from other provisions of the Corporations Act and National Credit Regulations that relate to the resignation, removal and replacement of auditors: see Sections B, C, D and E of the draft updated RG 26. Our final guidance in these areas will depend on any change in our fundamental approach discussed in B1–B6.

Your feedback

- B12Q1 Do you have any comments on our approach of incorporating into the regulatory guide our guidance on the provisions of the Corporations Act and National Credit Regulations that relate to auditor resignation, removal and replacement? Please provide reasons supporting your comments.

Rationale

- 44 The existing guidance in RG 26 addresses only the resignation of public company auditors under s329. By incorporating into one regulatory guide all the provisions of the Corporations Act and National Credit Regulations that relate to auditor resignations, removals and replacements, users would be provided with a ‘one-stop shop’ for information. The guidance would clarify the principles, policies and common approach adopted by us in assessing applications for all auditor resignations, removals and replacements under the Corporations Act and National Credit Regulations.

Registered schemes and compliance plans, AFS licensees and credit licensees

Proposal

- B13** Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that:
- (a) an application for consent to the resignation or removal of an auditor of a registered scheme or compliance plan should be lodged before the end of the financial year of the scheme for it to take effect, following our consent, within one month after the auditor’s report for that year is lodged;
 - (b) an application for consent to the resignation or removal of an auditor of an Australian financial services (AFS) licensee should be lodged before the end of the licensee’s financial year for it to take effect, following our consent, within one month after lodgement of the auditor’s report for that financial year; and
 - (c) an application for approval of the resignation or replacement of an auditor of a credit licensee trust account (trust account auditor) should be lodged before the end of the licensee’s financial year for it to take effect, following our approval, within one month after lodgement of the trust account audit report for that financial year.

If the resignation, removal or replacement of an auditor of a registered scheme or compliance plan, AFS licensee or credit licensee is proposed to take effect on a date *other than* within one month after lodgement of the auditor’s report, early consent circumstances must exist: see draft updated RG 26.43–RG 26.44 (registered schemes), RG 26.56–RG 26.59 (AFS licensees) and RG 26.71–RG 26.73 (credit licensees).

Your feedback

- B13Q1 Do you have any comments on our proposed timing for when an application for consent to, or approval of, the resignation, removal or replacement of an auditor should be lodged?
- B13Q2 Do you have any comments on our proposed timing for when the resignation, removal or replacement of an auditor will take effect, following our consent or approval?

B13Q3 Should auditors be allowed to resign without a replacement auditor being nominated?

B13Q4 Should we allow consent at any time even if early consent circumstances do not exist?

B13Q5 Do you have any comments on our proposed requirement for early consent circumstances to exist for the resignation, removal or replacement of an auditor to take effect on a date other than within one month after lodgement of the audit report? Please provide reasons supporting each of your comments.

Rationale

- 45 It is important that auditors remain in office until after completion of the audit to ensure that their independence and objectivity are not compromised, that they are not replaced because of a disagreement with management on reporting a matter, and that there is continuity to ensure a timely and efficient audit.
- 46 It is also important that the auditor of a registered scheme or compliance plan continues to hold office after reporting so that they can answer any questions from members of the registered scheme relating to the audit. Our proposed approach for registered schemes is consistent with the approach currently outlined in RG 136.
- 47 The proposed requirement to lodge an application for consent to, or approval of, the resignation, removal or replacement of an auditor before the end of the scheme or licensee's financial year ensures that the independence of the auditor is not affected by the existence of an unresolved decision during the completion of the audit process, and that the process to decide on the resignation or removal of an auditor does not interfere with the completion of the financial reporting, compliance and audit process.
- 48 Our proposed approach is that consent or approval should not be assumed and it is important that an outgoing auditor continues to act as auditor until we have granted our consent or approval.

Single member public companies

Proposal

B14 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that we can consent to the resignation of an auditor of a single member public company that does not hold an AGM to take effect within one month after the lodgement of the audit report.

Where early consent circumstances exist, we may consent to a resignation outside this period. While many single member public companies are owned by other public companies, we suggest that early consent circumstances may exist where the member is a natural person: see draft updated RG 26.30–RG 26.31 and RG 26.99.

Your feedback

B14Q1 Do you have any comments on our proposed approach to providing consent to auditor resignations for single member public companies electing not to hold an AGM? Please provide reasons supporting your comments.

Rationale

- 49 For companies, the appointment of an auditor is primarily a matter for the members of the company. If the auditor last appointed by members resigns, s327(B) requires the members of a public company to appoint a replacement auditor at the next AGM.
- 50 A public company that has only one member is not required to hold an AGM under s250N(4). Therefore, a change of auditor for single member public companies does not need to occur at an AGM.
- 51 However, under s329(5), our consent to the resignation is still required. Therefore, we have to be satisfied with the reasons for the resignation to ensure that the auditor's independence is maintained and an effective audit can be conducted.
- 52 Many single member public companies are owned by other public companies and have a number of ultimate beneficial owners who may be subject to similar conditions on the timing of the resignation of their own auditors. However, if a single member company has a natural person as a member, it is likely that the member would be closely involved in the change of auditors.

C Regulatory and financial impact

- 53 In developing the proposals in this paper, we have carefully considered the regulatory and financial impact of our proposed updated principles and guidance on the resignation, removal and replacement of auditors.
- 54 We consider that the proposed updates will assist registered company auditors and entities requiring audits under the Corporations Act and National Credit Regulations by providing more transparency on our guidance and our views on what may or may not constitute early consent circumstances.
- 55 Based on the information currently available to us, we do not anticipate that the proposed update to RG 26 will have a significant regulatory or financial impact.
- 56 Before updating our guidance in RG 26, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
 - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 57 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 58 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See 'The consultation process' p. 4.

Appendix: International approaches

59 The requirements in relation to auditor resignations and removals in Canada, the European Union, the United Kingdom, and the United States are summarised below.

60 For these jurisdictions, it appears that regulator consent is not required and that auditor resignation can occur at any time subject to appropriate disclosure to the market and the relevant regulator. The removal of a company auditor generally requires the vote of members in a general meeting.

Canada

61 Auditor resignations and removals requirements are set out in National Policy Statement 31 *Change of auditor of a reporting issuer*, issued by the Canadian Securities Administrators (CSA) in 1990.

62 A reporting issuer, such as a public company, which has issued securities under a prospectus or is listed, is required to provide a notice to a shareholder meeting concerning a change of auditor (with letters from the outgoing and incoming auditors that comment on whether they agree with the reasons for the change described on the notice) whenever:

- (a) it receives a notification from its auditor of the auditor's resignation or refusal to be reappointed; or
- (b) the reporting issuer proposes to its shareholders to terminate the auditor.

63 The notice must also be lodged with the relevant securities regulator and must state:

- (a) the type of auditor change;
- (b) whether the auditor's report for the previous two fiscal years contained reservations and, if so, a description of such reservations; and
- (c) whether the change and appointment of the successor auditor has been considered or approved by the audit committee or board of directors.

European Union

64 In accordance with Article 38 of Directive 2006/43/EC of the European Parliament and of the Council, member states must ensure that statutory auditors or audit firms may be dismissed only where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures must not be proper grounds for dismissal. Also, member states must ensure that the audited entity and the statutory auditor or audit firm inform the authority or authorities responsible for public oversight concerning the dismissal or resignation of the statutory auditor or audit firm

during the term of the appointment and give an adequate explanation of the reasons for the termination.

65 Each member state has commenced adopting the provisions of the directive into its respective corporations legislation, with some states enacting stronger enhancements to these basic requirements.

United Kingdom

66 Under the *Companies Act 2006* (UK), the term of office of an auditor must cease at the conclusion of the next meeting of members at which accounts are presented, but the auditor may be reappointed.

67 A notice of any removal is required to be lodged with the Registrar of Companies.

68 An auditor may resign from their office by notifying the company in writing. The notice must be accompanied by a statement from the auditor of the circumstances connected with the auditor ceasing to hold office that needs to be brought to the attention of members or creditors of the company.

69 An auditor of a listed company or other entity in whose financial condition there is a major public interest who ceases for any reason to hold office is required to notify the UK Financial Reporting Council of their cessation and provide any statement of circumstances. An auditor of another type of entity who ceases to hold office before the end of their term of office is required to notify the relevant professional accounting body and the Professional Oversight Board of their cessation and accompany the notification with the statement of circumstances deposited with the company.

United States

70 An auditor's resignation or dismissal is contained in the Securities and Exchange Commission (SEC) Regulation S-K at Item 304. The company must provide the disclosure to the auditor and receive written confirmation from the auditor, addressed to the SEC, expressly confirming the auditor's agreement or disagreement with the company's disclosure.

71 Regulation S-K Item 304(a) requires the company to disclose whether:

- (a) the auditor resigned or was dismissed and the date of that event;
- (b) the auditor provided an adverse opinion or qualifications within the two most recent fiscal years and any subsequent interim period;
- (c) the company's audit committee recommended or approved the change in auditor; and
- (d) there was a disagreement between the company and the auditors within the two most recent fiscal years and any subsequent interim period.

72 The company must file the documents with the SEC for the public record.

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to issue an updated RG 26 to provide guidance on the resignation, removal and replacement of auditors that is consistent with our guidance in the existing RG 26. The attached draft updated RG 26 has been prepared on a basis consistent with our existing approach.</p>	<p>B1Q1 Do you have any comments or concerns about ASIC's current approach to the resignation and removal of auditors within the context of the legislative requirements? Please outline the nature of any suggested change, the benefits and costs of any change, and the reasons for the change?</p> <p>B1Q2 Do you have any comments on the existing legislative requirements relating to the resignation and removal of auditors?</p>
<p>B2 Our current approach is that the resignation of an auditor of a public company should normally occur at the AGM or within one month after the lodgement of the auditor's report for registered schemes.</p>	<p>B2Q1 Do you agree that the resignation of auditors should normally take effect at the AGM for public companies and within one month after the lodgement of the auditor's report for entities that do not hold AGMs? Does this timing create any practical difficulties?</p> <p>B2Q2 Do you agree that the resignation or removal of auditors of registered schemes and compliance plans should normally take effect within one month after the auditor's report is lodged? Does this timing create any practical difficulties?</p> <p>B2Q3 Do you agree with the underlying principles for the normal timing of the resignation of an auditor outlined in draft updated RG 26.14–RG 26.20? Should these underlying principles be changed, particularly taking into account the introduction of the legislative requirements for auditor independence since our guidance was first developed, which are additional to the professional independence requirements? Should there be additional or alternative underlying principles for the timing of resignations?</p> <p>B2Q4 In your experience, what proportion of resignations of auditors are initiated by the auditor and what proportion are initiated by the company?</p> <p>B2Q5 Should ASIC consent be given to a resignation at any time of the year? Should there be exemptions, for example, when ASIC is made aware that there is a disagreement between the auditor and the management concerning an accounting treatment or other aspect of the company's reporting obligations? Should other conditions be considered—for example, taking into account the legislative provisions for the removal of auditors?</p>

Proposal	Your feedback
	<p>B2Q6 Should audit committees or directors control the timing of the resignation of auditors? To what extent should audit committees or the board of directors be regarded as representing the interests of members in relation to a change of auditor? To what extent should audit committees and directors be responsible for ensuring that audit quality is maintained?</p> <p>B2Q7 Are there practical issues in using the removal provisions for a public company to change auditors at any time during the year, given the costs associated with the requirement to hold a general meeting?</p> <p>B2Q8 Do you have any comments on whether there should be disclosure to the market about the resignation of an auditor, similar to the approach in other countries where regulator consent to the resignation is not generally required and auditor resignations can occur at any time? Please provide reasons supporting your comments.</p>
<p>B3 Our current approach is to consent to the resignation of an auditor of a public company only if a replacement auditor has been identified by the company.</p>	<p>B3Q1 Should ASIC's consent to the resignation of an auditor of a public company be conditional on the company having obtained a possible replacement auditor? If not, how should ASIC comply with its obligation to appoint an auditor? In particular, how should ASIC choose a replacement auditor?</p> <p>B3Q2 If we require an incumbent auditor to continue in office, or if we appoint a new auditor, does this create a potential conflict with the obligations of auditors under the auditing standards concerning the acceptance and continuance of audit engagements? If so, how should such conflicts be addressed?</p>
<p>B4 Our current approach is that a proposed new auditor of a public company should not commence audit work until after we have consented to the resignation of the incumbent auditor.</p>	<p>B4Q1 There are instances when a proposed new auditor of a public company commences audit work without the company first seeking our consent to the resignation of the incumbent auditor. In such circumstances, should we consent to the resignation of the incumbent auditor at any time of the year to avoid any potential duplication of costs if the incumbent auditor were required to continue in office?</p> <p>B4Q2 Are there any other practical difficulties or implications in planning a change in auditor?</p>

Proposal	Your feedback
<p>B5 Our current approach is that the resignation of an auditor of a public company following a merger of audit firms or the replacement of the audit firm by an authorised audit company should occur at the next AGM of the company.</p>	<p>B5Q1 Do the normal requirements for the timing of the resignation of auditors of public companies cause practical difficulties for audit firms that merge or are replaced by an authorised audit company? Should these practical difficulties be addressed and, if so, how? Please provide your reasons.</p>
<p>B6 We are seeking to collect information on the costs and benefits of any possible changes to our current approach and are interested in any other concerns with our current approach.</p>	<p>B6Q1 If you suggest any changes to our current approach, what are the costs and benefits flowing from these changes?</p> <p>B6Q2 Do you have any other concerns with our existing guidance, as it is outlined in the draft updated RG 26?</p>
<p>B7 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose to include examples of ‘early consent circumstances’, where we will give consent to the resignation of an auditor of a public company other than at the AGM, or to the resignation, removal or replacement of an auditor of another entity other than within one month after the audit report is lodged: see Table 2 and Table 3 of the draft updated RG 26.</p>	<p>B7Q1 Should the draft updated RG 26 include further examples of early consent circumstances? Please outline any such examples and the reasons why they should be included in the updated RG 26.</p> <p>B7Q2 Are there any practical implications of the timing of the resignation of auditors of companies that are responsible entities and their related schemes?</p> <p>B7Q3 Do you have any other suggestions about what may or may not constitute early consent circumstances? Please provide reasons supporting each of your comments.</p> <p>B7Q4 Do you have any comments on the proposed replacement of the term ‘exceptional circumstances’ in the current RG 26 with ‘early consent circumstances’ in the draft updated RG 26?</p>
<p>B8 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that non-payment of audit fees should be one of the factors indicating that early consent circumstances do not exist: see Table 3 of the draft updated RG 26.</p>	<p>B8Q1 Do you have any comments on whether unpaid audit fees could be perceived to be a conflict of interest and therefore auditors should be able to apply for consent to resign because of a threat to their independence?</p> <p>B8Q2 Should auditors, in this situation, be permitted to resign without a replacement auditor being nominated? Please provide reasons supporting each of your comments.</p>
<p>B9 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that outgoing auditors should bring to our attention changes in the audit firm or practice structure as the result of a merger, acquisition or dissolution: see draft updated RG 26.86–RG 26.87.</p>	<p>B9Q1 Do you agree with our proposed requirement for outgoing auditors to provide information on changes in the firm or practice structure as a result of mergers, acquisitions and dissolutions? Please provide reasons supporting your comments.</p>

Proposal	Your feedback
<p>B10 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that:</p> <p>(a) if the auditor of a listed company or listed registered scheme is ineligible to continue as auditor under the auditor rotation requirements in s324DA, and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2) (see draft updated RG 26.77–RG 26.79); and</p> <p>(b) if a company is an authorised deposit-taking institution (ADI) and the auditor is ineligible to continue as auditor because they would be in contravention of the rotation requirements of paragraph 89 of Prudential Standard CPS 510 Governance, made under the Banking Act 1959, and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2) (see draft updated RG 26.80–RG 26.81).</p>	<p>B10Q1 Do you have any comments on our regulatory approach to the resignation of auditors that are ineligible to continue because of auditor rotation requirements?</p>
<p>B11 We are seeking to collect information on any other changes that should be made within the context of our current fundamental approach if that approach is retained.</p>	<p>B11Q1 Do you have any other suggestions for changes to the draft updated RG 26 in the context of our current approach?</p>
<p>B12 We propose to incorporate guidance in the updated RG 26 on our approach to giving consent or approval under all the requirements from other provisions of the Corporations Act and National Credit Regulations that relate to the resignation, removal and replacement of auditors: see Sections B, C, D and E of the draft updated RG 26. Our final guidance in these areas will depend on any change in our fundamental approach discussed in B1–B6.</p>	<p>B12Q1 Do you have any comments on our approach of incorporating into the regulatory guide our guidance on the provisions of the Corporations Act and National Credit Regulations that relate to auditor resignation, removal and replacement? Please provide reasons supporting your comments.</p>

Proposal	Your feedback
<p>B13 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that:</p> <p>(a) an application for consent to the resignation or removal of an auditor of a registered scheme or compliance plan should be lodged before the end of the financial year of the scheme for it to take effect, following our consent, within one month after the auditor's report for that year is lodged;</p> <p>(b) an application for consent to the resignation or removal of an auditor of an Australian financial services (AFS) licensee should be lodged before the end of the licensee's financial year for it to take effect, following our consent, within one month after lodgement of the auditor's report for that financial year; and</p> <p>(c) an application for approval of the resignation or replacement of an auditor of a credit licensee trust account (trust account auditor) should be lodged before the end of the licensee's financial year for it to take effect, following our approval, within one month after lodgement of the trust account audit report for that financial year.</p>	<p>B13Q1 Do you have any comments on our proposed timing for when an application for consent to, or approval of, the resignation, removal or replacement of an auditor should be lodged?</p> <p>B13Q2 Do you have any comments on our proposed timing for when the resignation, removal or replacement of an auditor will take effect, following our consent or approval?</p> <p>B13Q3 Should auditors be allowed to resign without a replacement auditor being nominated?</p> <p>B13Q4 Should we allow consent at any time even if early consent circumstances do not exist?</p> <p>B13Q5 Do you have any comments on our proposed requirement for early consent circumstances to exist for the resignation, removal or replacement of an auditor to take effect on a date other than within one month after lodgement of the audit report? Please provide reasons supporting each of your comments.</p>
<p>If the resignation, removal or replacement of an auditor of a registered scheme or compliance plan, AFS licensee or credit licensee is proposed to take effect on a date other than within one month after lodgement of the auditor's report, early consent circumstances must exist: see draft updated RG 26.43–RG 26.44 (registered schemes), RG 26.56–RG 26.59 (AFS licensees) and RG 26.71–RG 26.73 (credit licensees).</p>	

Proposal	Your feedback
<p>B14 Subject to the impact of any change in our fundamental approach discussed in B1–B6, we propose that we can consent to the resignation of an auditor of a single member public company that does not hold an AGM to take effect within one month after the lodgement of the audit report.</p> <p>Where early consent circumstances exist, we may consent to a resignation outside this period. While many single member public companies are owned by other public companies, we suggest that early consent circumstances may exist where the member is a natural person: see draft updated RG 26.30–RG 26.31 and RG 26.99.</p>	<p>B14Q1 Do you have any comments on our proposed approach to providing consent to auditor resignations for single member public companies electing not to hold an AGM? Please provide reasons supporting your comments.</p>



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 26

Resignation, removal and replacement of auditors

May 2013

About this guide

This is a guide for public companies, responsible entities of registered managed investment schemes, Australian financial services (AFS) licensees, credit licensees, and their appointed auditors.

It explains how we may exercise our powers in approving the resignation, removal and replacement of auditors under s329, 331AC, 601HH, 990F and 990G of the *Corporations Act 2001* (Corporations Act), and reg 19(4) of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

This guide does not apply to the removal or replacement of an auditor of a company (other than an auditor of a proprietary company that is an AFS licensee or an auditor of a credit licensee trust account), or to the resignation of an auditor of a proprietary company or a small company limited by guarantee (other than an auditor of a proprietary company that is an AFS licensee or an auditor of a credit licensee trust account). In these instances, ASIC's consent is not required.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft version was issued in May 2013 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Policy Statement 26, issued 22 June 1992, rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This guide explains the policies and principles that will influence how ASIC may exercise its powers to give consent or approval to:

- the resignation of a public company auditor (see Section B);
- the resignation and removal of an auditor of a registered managed investment scheme (registered scheme) or compliance plan (see Section C);
- the resignation and removal of an auditor of an Australian financial services (AFS) licensee (see Section D); and
- the resignation and replacement of an auditor of a credit licensee trust account (trust account auditor) (see Section E).

We have also provided guidance about auditor rotation requirements (Section F), the circumstances that should be brought to ASIC's attention relating to an auditor ceasing to hold office (Section G), and the process for applying to ASIC for our consent (Section H).

Purpose of this guide

- RG 26.1 This guide, which supersedes our previous version of Regulatory Guide 26 *Resignation of auditors* (RG 26), issued in June 1992, sets out the policies and principles that will influence the exercise of the power conferred on us by s329(6), 331AC(1), 331AC(3), 601HH(1)(b), 601HH(3), 990F(b) and 990G(2) of the *Corporations Act 2001* (Corporations Act), and regs 19(4)(d) and 19(4)(e) of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

Note: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified; and references to regulations (regs) are to the National Credit Regulations, unless otherwise specified.

Resignation, removal and replacement of auditors under the Corporations Act and National Credit Regulations

- RG 26.2 The Corporations Act and National Credit Regulations contain provisions relevant to the resignation, removal and replacement of auditors in relation to a number of different entities.
- RG 26.3 In general, the resignation, removal or replacement of an auditor must occur at a specific time (which will differ depending on the type of entity involved), unless early consent circumstances exist. Table 1 provides a summary of this timing. ASIC will decide whether to consent to a resignation, removal or replacement on a case-by-case basis. The appendix sets out some non-exhaustive examples of factors that will generally influence us in considering whether early consent circumstances exist.

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Table 1: Summary of timing of auditor resignations, removals and replacements, and relevant provisions

Entity	Relevant provisions	Summary of timing of resignation, removal and replacement of auditors	Location of guidance
Public company	s329 of the Corporations Act	The resignation of a public company auditor will take effect, following ASIC's consent, at the annual general meeting (AGM), unless there are early consent circumstances.	Section B
Registered schemes and compliance plans	s331AC and 601HH of the Corporations Act	The resignation or removal of an auditor of a registered scheme or compliance plan will take effect, following ASIC's consent, within one month after the audit report is lodged, unless there are early consent circumstances.	Section C
AFS licensees	s990F, 990G and 990H of the Corporations Act	The resignation or removal of an auditor of an AFS licensee (that is not a public company) will take effect, following ASIC's consent, within one month after the audit report is lodged, unless there are early consent circumstances.	Section D
Credit licensees	regs 19(4)(d) and 19(4)(e) of the National Credit Regulations	The resignation or replacement of a trust account auditor will take effect, following ASIC's approval, within one month after the trust account audit report is lodged, unless there are early consent circumstances.	Section E

Auditor rotation

RG 26.4 Auditor rotation is one of the auditor independence requirements that apply to listed companies and listed registered schemes under Div 5 of Pt 2M.4 of the Corporations Act. The auditor rotation requirements specify a limited term of five successive financial years for an auditor to play a significant role in the audit of a listed company or listed registered scheme (which may be extended to seven successive financial years, in certain circumstances, if ASIC gives relief or, as from 25 July 2012, if the directors give approval: see amendments made to s324DA by the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*): see Regulatory Guide 187 *Auditor rotation* (RG 187) for further information.

RG 26.5 In assessing an application for the resignation of an auditor of a listed company or the resignation or removal of an auditor of a listed registered scheme in connection with the rotation requirements in Div 5 of Pt 2M.4, we will consider the implications of the resignation or removal on audit quality: see Section F.

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Circumstances that should be brought to ASIC's attention

- RG 26.6 There are a number of circumstances connected with an auditor ceasing to hold office that we expect to be brought to our attention, including:
- (a) whether the independence of the audit function is not being preserved;
 - (b) if the outgoing auditor is aware that their resignation, removal or replacement may be connected with 'opinion shopping' (see RG 26.84–RG 26.85); or
 - (c) if there have been any changes in the audit firm or practice structure as the result of a merger, acquisition or dissolution: see Section G.

How to make an application to ASIC for consent

- RG 26.7 An application to ASIC for consent to the resignation, removal or replacement of an auditor must be made in writing. Where a form has been approved by us for the purpose of the resignation, removal or replacement of an auditor, the application should be made using that form.
- RG 26.8 The resignation of an auditor of a public company, registered scheme, compliance plan or AFS licensee can only take effect on the last to occur of:
- (a) the day specified in the notice of resignation;
 - (b) the day on which ASIC gives consent; or
 - (c) the day fixed by us for this purpose, in accordance with s329(8), 331AC(5), 601HH(5) and 990H .
- RG 26.9 We are not empowered to enable a resignation to take effect on a date that precedes the day on which we give consent.
- RG 26.10 The resignation or replacement of a trust account auditor under regs 19(4)(d) or 19(4)(e) requires ASIC's approval. In these circumstances, the appointment continues until we give approval.
- RG 26.11 The removal of an auditor of a registered scheme, compliance plan or AFS licensee under s331AC(1), 601HH(1)(b) or 990F(b) requires ASIC's consent. In these circumstances, the appointment continues until we give consent. The removal of an auditor of a company does not require ASIC's consent (other than an auditor of a proprietary company that is an AFS licensee (see Section D) or a trust account auditor (see Section E)).
- RG 26.12 In all cases, our consent should not be assumed and it is important that an outgoing auditor continues to act as auditor until we have granted consent. We will not grant consent merely because a proposed incoming auditor has commenced work without the outgoing auditor having obtained our consent to resign or without our consent being given for the removal of a scheme

auditor. Granting consent in such circumstances would undermine the legislative requirement to obtain ASIC consent.

RG 26.13 See Section H for further guidance about making an application to ASIC for consent.

Underlying principles

- RG 26.14 In exercising our powers to consent to the resignation, removal or replacement of an auditor, our overriding concerns are to ensure that the quality and independence of the audit function are preserved. In particular, our approach to consenting to the resignation or removal of an auditor focuses on:
- (a) any threats to the independence of the auditor;
 - (b) whether the timing of any change in auditor has the potential to affect the effective completion of an audit by the incoming auditor; and
 - (c) protecting the statutory right of members of a public company to decide on the appointment of new auditors at an AGM.
- RG 26.15 Auditor independence is fundamental to the credibility and reliability of an auditor's report. To enhance the quality and independence of the audit process, the Corporations Act sets out a number of key requirements relating to independence, including:
- (a) general requirements for auditor independence where auditors are required to address conflict of interest situations arising from audit engagements and to resolve and/or report the matter to ASIC;
 - (b) specific requirements for auditor independence relating to restrictions on certain employment and financial relationships between auditors and their clients;
 - (c) requirements for auditors to make an annual written declaration that they have not contravened the independence requirements of the Corporations Act and any applicable code of professional conduct or, where such contraventions have occurred, set out details of this in the declaration; and
 - (d) requirements for the compulsory rotation of individuals who have played a significant role in the audit of a listed company or listed registered scheme for five successive financial years.
- RG 26.16 Auditor independence requirements are also contained in the *National Consumer Credit Protection Act 2009* (National Credit Act), which requires that a trust account auditor must report any matter that constitutes an attempt to unduly influence, coerce, manipulate or mislead the auditor in the preparation of the audit report. In exercising our powers to consent to the

resignation, removal and replacement of an auditor, our overriding concern is to ensure that the quality and independence of the audit function is preserved.

- RG 26.17 An auditor must exercise objective and impartial judgement in conducting an audit, and must be able to report the audit findings free from any pressure and undue influence from others. The threat of removal from office by directors of a company who wish to coerce favourable responses from an auditor is an example of such pressure or influence. If there is potential uncertainty about the continuation of an auditor at the time that a financial report is completed, this may create a threat to independence.
- RG 26.18 An audit is a continuing process throughout and after the financial year. Audit quality may be compromised if a change in auditor occurs during the financial year or after the end of the financial year.
- RG 26.19 Members of public companies have the right to appoint auditors at an AGM. If the directors fill a vacancy in the office of auditor during the financial year, that appointment ceases at the next AGM, at which time members may appoint the same auditor or a different auditor. We are conscious that consent to the resignation of an auditor during a financial year can lead to a new auditor being appointed by directors and undertaking an audit before the appointment has been considered by the members. In these circumstances, members may feel under greater pressure to appoint the auditor chosen by the directors. For this reason, we would normally only consent to the resignation of a public company auditor at an AGM.
- RG 26.20 In our view, the relevant provisions of the Corporations Act, National Credit Act and National Credit Regulations requiring ASIC consent are designed to protect:
- (a) the independence of auditors from undue influence by persons charged with the governance of an entity;
 - (b) audit quality; and
 - (c) those members and investors who rely on the auditor's report.

B Resignation and removal of public company auditors

Key points

We may exercise our powers to consent to the resignation of an auditor of a public company under s329(6).

This section gives guidance on:

- resignations that take effect at the AGM (see RG 26.23–RG 26.26);
- resignations that do not take effect at the AGM (see RG 26.27–RG 26.29);
- single member public companies (see RG 26.30–RG 26.31);
- when an application for ASIC's consent should be lodged (see RG 26.32–RG 26.33);
- deliberately disqualifying company auditors (see RG 26.34–RG 26.35); and
- the removal of company auditors (see RG 26.36).

RG 26.21 An auditor of a public company may resign if the auditor has applied, in writing, to ASIC for our consent to the resignation and consent has been granted. Form 342 *Application for consent to resign as an auditor* should be used by an auditor to apply for consent to resign as auditor of a public company. The company must notify ASIC of any change in auditor using Form 315 *Notification of resignation, removal or cessation of auditor*.

Note: Our consent is not required for the resignation of an auditor of a proprietary company or a small company limited by guarantee, other than an auditor of a proprietary company that is an AFS licensee (see Section D) or a trust account auditor of a credit licensee (see Section E).

RG 26.22 The appointment of an auditor is primarily a matter for the members. While s327C(1) requires the directors to fill any vacancy in the office of auditor that occurs other than at an AGM, the term of this replacement auditor will expire at the next AGM. In this case, s327B(1)(b) requires the members to appoint a replacement auditor at the next AGM. Although directors can appoint a replacement auditor to hold office until the AGM, we consider that, in the absence of early consent circumstances, this should not occur. Under s329(6), ASIC is responsible for assessing the appropriateness of the reasons for a resignation.

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Resignations that take effect at the AGM

RG 26.23 A public company auditor seeking our consent to resign should apply for the resignation to take effect at the next AGM, unless they can demonstrate that there are early consent circumstances and that an alternative date is appropriate. We will consent to the resignation taking effect at a time other than at the next AGM only if there are early consent circumstances.

RG 26.24 In general, we will consent to the resignation of a public company auditor that takes effect at the next AGM if:

- (a) the auditor's independence is not compromised and we consider that the auditor's reasons for the resignation are acceptable;

Note: Generally, 'acceptable' means that the reasons provide enough detail for us to make a decision.

- (b) the auditor has notified the directors of the company in writing of their application to ASIC for consent to resign at or about the same time as the application is made to us;
- (c) the auditor states that all s311 matters have been reported to us at the date of the application, and that any further s311 matters that come to their attention before resignation will be reported to us;

Note: Under s311, an auditor must report to us matters that they have reasonable grounds to suspect amount to a significant contravention of the Corporations Act or, in the case of matters that are not a significant contravention, matters that the auditor believes will not be adequately dealt with in the audit report or by bringing the matters to the attention of the directors: see Regulatory Guide 34 *Auditor's obligations: Reporting to ASIC* (RG 34).

- (d) the auditor states that, other than as notified to ASIC, there are no disputes with the company management connected with their ceasing to hold office;
- (e) there is no evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (f) the auditor has fulfilled all of their obligations under the Corporations Act;
- (g) the auditor states that, other than as notified to ASIC, there are no other circumstances connected with their ceasing to hold office that should be brought to our attention (see Section G);
- (h) the auditor provides confirmation from the directors that a replacement auditor would consent to be appointed, subject to ASIC consent to the resignation of the incumbent auditor and the decision of members concerning the appointment of a new auditor at the next AGM; and
- (i) the application is lodged with us before the signing of the auditor's report.

RG 26.25 Members of the company do not vote on an auditor's resignation. However, by requiring an auditor's resignation to ordinarily take effect at the next

AGM, we aim to ensure that an outgoing auditor completes the current audit and that they retain the right to attend and be heard at the AGM in accordance with s249K and 249V.

- RG 26.26 When a vacancy in the office of auditor occurs at the AGM, s327B(1)(b) requires the company to appoint a new auditor. Under s328B, the nomination of an auditor should be addressed before the AGM. In particular, the nomination of an incoming auditor should be received by the company from a member of the company before the meeting is convened, or not less than 21 days before the meeting.

Resignations that do not take effect at the AGM

- RG 26.27 If the auditor of a public company wishes to resign on a date *other than* at the AGM, early consent circumstances must exist. The auditor must still provide all of the information outlined in RG 26.24. We will assess the application on its merits. The auditor should provide the following additional information:

- (a) the reasons why the auditor considers that early consent circumstances exist, and that a date for resignation other than the next AGM is appropriate (see Table 2 and Table 3 in the appendix for examples);
- (b) the auditor's explanation as to the timing of the proposed resignation, including the impact on the effectiveness of the audit process; and
- (c) a statement by the auditor as to whether all s311 matters have been reported to us at the date of the application, and whether any further s311 matters that come to their attention before resignation will be reported to us.

Note: For determining whether a matter should be reported under s311, the auditor should assume that the matter will not be dealt with adequately by comment in the audit report because the auditor is unlikely to have any control over the content of the audit report.

- RG 26.28 We are unlikely to consent to resignation other than at the AGM merely because an auditor of any entity managed by the company or the auditor of a proprietary company controlled by the company has been changed. In particular, ASIC consent to the resignation of the auditor of the company should be sought before changing the auditor of an entity for which ASIC consent is not required.

- RG 26.29 If a company wishes to change its auditor at a time other than the AGM, and there are no early consent circumstances, the removal mechanism provided in s329(1) is available: see RG 26.36.

Note: Our consent is not required for the removal or replacement of an auditor of a company, other than an auditor of a proprietary company that is an AFS licensee (see Section D) or a trust account auditor of a credit licensee (see Section E).

Single member public companies

- RG 26.30 The resignation of an auditor of a single member public company does not need to take effect at the next AGM, because a single member public company can elect not to hold an AGM under s250N(4). However, our consent to the resignation is still required under s329(5) to ensure that the auditor's independence is preserved and the incoming auditor can conduct an effective audit. Our consent will be conditional on the auditor's report being lodged within the legislative timeframes.
- RG 26.31 Unless early consent circumstances exist, we will only consent to the resignation of an auditor of a single member public company that does not hold an AGM (see s250N(4)) if the resignation is to take effect within one month after the lodgement of the auditor's report. The auditor must still provide all of the information outlined in RG 26.24 and RG 26.27.

When should you lodge an application for ASIC's consent?

- RG 26.32 In general, we expect a company auditor to lodge an application for our consent to their resignation before the signing of the auditor's report.
- RG 26.33 This will ensure that the independence of an auditor is not affected by the existence of an unresolved decision during the completion of the audit process, and that the process to decide on the resignation and appointment of auditors does not interfere with the completion of the audit.

Deliberate disqualification

- RG 26.34 Under s324CM, an appointed auditor of a company must not disqualify themselves deliberately from acting as auditor while the appointment continues—that is, in the course of their appointment, an auditor must not bring about a state of affairs that would make the auditor contravene the registration and auditor independence requirements in Divs 2 and 3 of Pt 2M.4.
- RG 26.35 While we may consent to an application for resignation where it appears that the auditor may have deliberately disqualified themselves, we reserve our right to take action in relation to a contravention.

Removal of public company auditors

- RG 26.36 Removals require the approval of company members in a general meeting. ASIC consent is not required but it is necessary to lodge the notice of any removal with ASIC. The removal process is set out in s329(1)–(4), including

the requirement to give the auditor the opportunity to provide written representations to be sent to all members and read out at the meeting. The auditor also has the right to be heard at the meeting. It is unlikely that we will give consent to written representations not being provided to members.

RG 26.37 We may review the removal of an auditor where circumstances of the removal suggest that the quality, independence and integrity of the audit function are not being preserved and/or there have been contraventions of the Corporations Act.

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C Resignation and removal of auditors of registered schemes or compliance plans

Key points

We may exercise our powers to consent to the resignation or removal of an auditor of a registered scheme or compliance plan under s331AC and 601HH.

This section gives guidance on:

- the resignation of auditors of registered schemes and compliance plans (see RG 26.41–RG 26.43);
- the removal of auditors of registered schemes and compliance plans (see RG 26.44–RG 26.46);
- when an application for ASIC’s consent should be lodged (see RG 26.47–RG 26.48); and
- deliberately disqualifying auditors of registered schemes (see RG 26.49–RG 26.50).

RG 26.38 An auditor of a registered managed investment scheme (registered scheme) or compliance plan who wishes to resign, or a responsible entity that wishes to remove an auditor from office, must apply, in writing, to ASIC for our consent to the resignation or removal. Form 5132 *Application for consent from ASIC for resignation or removal of scheme auditor* should be used in relation to an auditor of a registered scheme, whereas an application for consent to the resignation or removal of a compliance plan auditor should be made in writing.

RG 26.39 Unlike company auditors, the appointment of an auditor of a registered scheme or compliance plan is controlled by the responsible entity of the scheme and not by the scheme members. This does not mean that the independence of auditors and audit quality are less important. Registered schemes have no AGM—however, it is important that auditors:

- (a) complete their audit for each financial year; and
- (b) hold office when they lodge their audit report and it is sent to members of the scheme.

RG 26.40 Auditors also need to continue holding office after reporting so that they can answer any questions from members of the registered scheme about the audit.

Resignations that take effect within one month after the audit report is lodged

RG 26.41 We expect that an auditor's resignation, which has been consented to by us, will take effect within one month after the audit report for the financial year is lodged with us. In general, we will consent to the resignation of an auditor of a registered scheme or compliance plan if:

- (a) the auditor's independence is not compromised and we consider that the auditor's reasons for the resignation are acceptable;

Note: Generally, 'acceptable' means that the reasons provide enough detail for us to make a decision.

- (b) the auditor has notified the responsible entity in writing of their application to ASIC for consent to resign at or about the same time as the application is made to us;

- (c) the auditor states that all s311 and 601HG(4), (4A) and (4B) matters have been reported to ASIC at the date of the application, and that any further s311 and 601HG(4), (4A) and (4B) matters that come to their attention before resignation will be reported to us;

Note: Under s311 and 601HG(4), (4A) and (4B), an auditor must report to us matters that they have reasonable grounds to suspect amount to a significant contravention of the Corporations Act or, in the case of matters that are not a significant contravention, matters that the auditor believes will not be adequately dealt with in the audit report or by bringing the matters to the attention of the directors: see RG 34.

- (d) the auditor states that, other than as notified to ASIC, there are no disputes with the responsible entity connected with the auditor's ceasing to hold office;
- (e) there is no evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (f) the auditor has fulfilled all of their obligations under the Corporations Act;
- (g) the auditor states that, other than as notified to ASIC, there are no other circumstances connected with their ceasing to hold office that should be brought to our attention (see Section G);
- (h) the auditor provides a signed copy of a resolution of the directors of the responsible entity appointing a replacement auditor, and written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, both of which are subject to our approval of the resignation; and
- (i) the application is lodged with us before the end of the financial year of the scheme.

RG 26.42 Our consent will be conditional on the auditor's report being lodged within the legislative timeframes.

Resignations that take effect on another date

RG 26.43 If the auditor of a registered scheme or compliance plan wishes to resign on a date *other than* within one month after the audit report is lodged with us, early consent circumstances must exist. The auditor must still provide all of the information outlined in RG 26.41. We will assess each application on its merits, giving consideration to the following:

- (a) whether early consent circumstances have been shown to exist (see Table 2 and Table 3 in the appendix for examples);
- (b) the timing of the proposed resignation, including the impact on the effectiveness of the audit process; and
- (c) a statement by the auditor as to whether all s311 or 601HG(4), (4A) and (4B) matters have been reported to us at the date of the application, and whether any further s311 or 601HG(4), (4A) and (4B) matters that come to their attention before resignation will be reported to us.

Note: For determining whether a matter should be reported under s311 or 601HG(4), (4A) and (4B), the auditor should assume that the matter will not be dealt with adequately by comment in the audit report because the auditor is unlikely to have any control over the content of the audit report.

Removal of an auditor

RG 26.44 We expect that the removal of an auditor, which has been consented to by us, will take effect within one month after the audit report is lodged with us. We will assess each application for the removal of an auditor of a registered scheme or compliance plan on a case-by-case basis, giving consideration to:

- (a) any early consent circumstances (see Table 2 and Table 3);
- (b) the timing of the proposed removal, including the impact on the effectiveness of the audit process;
- (c) whether there is any evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (d) a letter from the auditor stating that, other than as notified to ASIC, there are no disputes with the responsible entity connected with the auditor's removal;
- (e) whether the responsible entity has notified the auditor in writing of their application to ASIC for consent to the removal at about the same time as the application is made to us;
- (f) whether the responsible entity has provided a signed copy of a directors' resolution appointing a replacement auditor, and written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, both of which are subject to our approval of the removal; and
- (g) whether the application is lodged with us before the end of the financial year of the scheme.

RG 26.45 If the auditor of a compliance plan has become ineligible to act under s601HG(2), the responsible entity must remove the auditor: s601HH(1)(a). Our consent is not required.

Note: If the auditor of a registered scheme has become ineligible to act under Divs 2 or 3 of Pt 2M.4, the auditor ceases to hold office under s331AAA(2). The auditor will also cease to hold office if the scheme is wound up: s331AD.

RG 26.46 On receipt of an application for consent to the removal of an auditor of a registered scheme or compliance plan, we may seek a written representation from the auditor about the circumstances of the removal. The auditor should, within seven days after receiving a letter from us, make a representation to us if they are of the opinion that:

- (a) they should not be removed;
- (b) there are concerns that the quality, independence and integrity of the audit function would not be preserved if we give our consent; or
- (c) there are matters that should be reported to us under s311 or 601HG(4), (4A) or (4B).

When should you lodge an application for ASIC's consent?

RG 26.47 In general, we expect an application for consent to the resignation or removal of an auditor of a registered scheme or compliance plan to be lodged before the end of the financial year of the scheme for it to take effect within one month after the audit report for that year is lodged.

RG 26.48 This will ensure that the independence of an auditor is not affected by the existence of an unresolved decision during the completion of the audit process, and that the process to decide on the cessation and appointment of auditors does not interfere with the completion of the audit process.

Deliberately disqualifying auditors

RG 26.49 Under s324CM, an appointed auditor of a registered scheme must not disqualify themselves deliberately from acting as auditor while the appointment continues—that is, in the course of their appointment, an auditor must not bring about a state of affairs that would make the auditor contravene the registration and auditor independence requirements in Divs 2 and 3 of Pt 2M.4.

RG 26.50 While we may consent to an application for resignation or removal, where it appears that the auditor may have deliberately disqualified themselves, we reserve our right to take action in relation to a contravention.

D Resignation and removal of auditors of AFS licensees

Key points

We may exercise our powers to consent to the resignation or removal of an auditor of an AFS licensee under s990F and 990G.

This section gives guidance on:

- the resignation of auditors of AFS licensees (see RG 26.53–RG 26.56);
- the removal of auditors of AFS licensees (see RG 26.58–RG 26.61);
- when an application for ASIC’s consent should be lodged (see RG 26.62–RG 26.63); and
- deliberately disqualifying auditors of AFS licensees (see RG 26.64–RG 26.65).

RG 26.51 The audit of an AFS licensee involves conducting a financial audit and a compliance audit to check whether the licensee is complying with the requirements of the Corporations Act. Therefore, the audit report is required to refer to compliance during the whole of the licensee’s financial year, not just part of that year.

RG 26.52 An auditor of an AFS licensee may resign if the auditor has applied, in writing, to ASIC for our consent to the resignation and consent has been granted. Our consent must also be obtained if an AFS licensee wishes to remove an auditor from office. Applications should be made using Form FS07 *Application for consent to remove an auditor of an Australian financial services licensee* or Form FS08 *Application for consent to resign as an auditor of an Australian financial services licensee*, as relevant.

Note: Where an AFS licensee is a public company, s990B–H do not apply (s990A), and the resignation and removal of an auditor occurs under s329.

Resignations that take effect within one month after the audit report is lodged

RG 26.53 We expect that the resignation of an auditor, which has been consented to by us, will take effect within one month after lodgement of the audit report for the AFS licensee’s financial year.

Note: Where an AFS licensee is a public company, the resignation of an auditor occurs under s329.

RG 26.54 In general, we will consent to the resignation of an auditor of an AFS licensee that takes effect within one month after the audit report is lodged if:

- (a) the auditor's independence is not compromised and we consider that the auditor's reasons for the resignation are acceptable;

Note: Generally, 'acceptable' means that the reasons provide enough detail for us to make a decision.

- (b) the auditor has notified the licensee in writing of their application to ASIC for consent to resign at or about the same time as the application is made to us;
- (c) the auditor states that all s990K matters have been reported to us at the date of the application, and that any further s990K matters that come to their attention before resignation will be reported to us;

Note: Under s990K, an auditor must report to us certain matters, including contraventions and suspected contraventions of certain provisions of the Corporations Act: see RG 34.

- (d) the auditor states that, other than as notified to ASIC, there are no disputes with the licensee connected with the auditor's ceasing to hold office;
- (e) there is no evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (f) the auditor has fulfilled all of their obligations under the Corporations Act;
- (g) the auditor states that, other than as notified to ASIC, there are no other circumstances connected with their ceasing to hold office that should be brought to our attention (see Section G);
- (h) the auditor provides written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, subject to our approval of the resignation;
- (i) where the licensee is a body corporate, the auditor provides a signed copy of a directors' or members' resolution appointing a replacement auditor, subject to our approval of the resignation
- (j) where the licensee is an individual, the auditor provides written evidence from the individual of the appointment of a replacement auditor, subject to our approval of the resignation; and
- (k) the application is lodged with us before the end of the licensee's financial year.

RG 26.55 Our consent will be conditional on the auditor's report being lodged within the legislative timeframes.

Resignations that take effect on another date

RG 26.56 If the auditor of an AFS licensee wishes to resign on a date *other than* within one month after the audit report is lodged with us, early consent circumstances must exist. The auditor must still provide all of the

information outlined in RG 26.54. We will assess each application on its merits, giving consideration to the following:

- (a) whether early consent circumstances have been shown to exist (see Table 2 and Table 3); and
- (b) the timing of the proposed resignation, including the impact on the effectiveness of the audit process.

RG 26.57 We are unlikely to consent to resignation other than within one month after the lodgement of the audit report merely because an auditor of any entity managed by the licensee or the auditor of a proprietary company controlled by the licensee has been changed. In particular, ASIC consent for the resignation of an auditor of the licensee should be sought before changing the auditor of an entity for which ASIC consent is not required.

Removal of an auditor

RG 26.58 We expect that the removal of an auditor, which has been consented to by us, will take effect within one month after lodgement of the audit report for the AFS licensee's financial year. If the removal of an auditor of an AFS licensee is proposed to take effect on a date *other than* within one month after lodgement of the audit report for the financial year, early consent circumstances must exist.

Note: Where an AFS licensee is a public company, the removal of an auditor occurs under s329, and our consent is not required. For resignations, see RG 26.53–RG 26.57.

RG 26.59 We will assess each application for the removal of an auditor of an AFS licensee on a case-by-case basis, giving consideration to:

- (a) any early consent circumstances (see Table 2 and Table 3);
- (b) the timing of the proposed removal, including the impact on the effectiveness of the audit process;
- (c) whether there is any evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (d) a letter from the auditor stating that, other than as notified to ASIC, there are no disputes with the licensee connected with the auditor's removal;
- (e) whether the licensee has notified the auditor in writing of their application to ASIC for consent to the removal at about the same time as the application is made to us;
- (f) whether the licensee has provided written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, subject to our approval of the removal;

- (g) where the licensee is a body corporate, whether the licensee has provided a signed copy of a directors' or members' resolution appointing a replacement auditor, subject to our approval of the removal; and
- (h) whether the application is lodged with us before the end of the licensee's financial year.

RG 26.60 If the auditor of an AFS licensee has become ineligible to act under s990C and reg 7.8.16 of the Corporations Regulations 2001 (Corporations Regulations), the licensee must remove the auditor: s990F(a). Our consent is not required.

RG 26.61 On receipt of an application for consent to the removal of an auditor of an AFS licensee, we may seek a written representation from the auditor about the circumstances of the removal. The auditor should, within seven days after receiving a letter from us, make a representation to us if they are of the opinion that:

- (a) they should not be removed;
- (b) there are concerns that the quality, independence and integrity of the audit function would not be preserved if we give our consent; or
- (c) there are matters that should be reported to us under s990K.

When should you lodge an application for ASIC's consent?

RG 26.62 In general, we expect an application for consent to the resignation or removal of an auditor of an AFS licensee to be lodged before the end of the licensee's financial year for it to take effect within one month after the auditor's report for that year is lodged.

RG 26.63 This will ensure that the independence of an auditor is not affected by the existence of an unresolved decision during the completion of the audit process, and that the process to decide on the cessation and appointment of auditors does not interfere with the completion of the audit process.

Deliberately disqualifying auditors

RG 26.64 In accordance with s990D(2), an appointed auditor of an AFS licensee must not deliberately disqualify themselves from acting as the auditor of a licensee while the appointment continues.

RG 26.65 While we may consent to an application for resignation or removal where it appears that the auditor may have deliberately disqualified themselves, we are not prevented from taking action in relation to a contravention.

E Resignation and replacement of auditors of credit licensee trust accounts

Key points

We may exercise our powers to approve the resignation or replacement of an auditor of a credit licensee trust account (trust account auditor) under regs 19(4)(d) and 19(4)(e) of the National Credit Regulations.

This section gives guidance on:

- the resignation of trust account auditors (see RG 26.68–RG 26.71);
- the replacement of trust account auditors (see RG 26.72–RG 26.74); and
- when an application for ASIC’s approval should be lodged (see RG 26.74–RG 26.76).

RG 26.66 Under reg 19(4), if a person is appointed as a credit licensee’s auditor to prepare a trust account audit report, the appointment is continuous until the first of the following events occurs:

- (a) the licensee is no longer required to keep a trust account;
- (b) the auditor dies or otherwise ceases to engage in the business of being an auditor;
- (c) the auditor is unable to perform their duties as the licensee’s auditor;
- (d) we approve the auditor’s resignation; or
- (e) we approve a request by the licensee to replace the person as auditor.

RG 26.67 A trust account auditor may resign if the auditor has applied, in writing, to ASIC for our approval to the resignation and such approval has been granted. A credit licensee can also replace a trust account auditor, subject to our approval of the auditor’s replacement. Applications should be made using Form CL17 *Australian credit licence—Application for approval to replace a trust account auditor* or Form CL18 *Australian credit licence—Application for approval to resign as a trust account auditor*, as relevant.

Resignations that take effect within one month after the trust account audit report is lodged

RG 26.68 We expect that the resignation of a trust account auditor, which has been approved by us, will take effect within one month after lodgement of the trust account audit report for the credit licensee’s financial year.

RG 26.69 In general, we will approve the resignation of a trust account auditor that takes effect within one month after the audit report is lodged if:

- (a) the auditor's independence is not compromised and we consider that the auditor's reasons for the resignation are acceptable;

Note: Generally, 'acceptable' means that the reasons provide enough detail for us to make a decision.

- (b) the auditor has notified the licensee in writing of their application to us for our approval to resign at about the same time as the application is made to us;
- (c) the auditor states that all matters that require reporting to us under s104 of the National Credit Act have been reported at the date of the application, and that any further s104 matters that come to their attention before resignation will be reported to us;

Note: Under s104 of the National Credit Act, an auditor must report to us certain matters, including contraventions and suspected contraventions of specified provisions of the National Credit Act.

- (d) the auditor states that there are no disputes, other than as notified to ASIC, with the licensee connected with the auditor's ceasing to hold office;
- (e) the auditor states that, other than as notified to ASIC, there are no other circumstances connected with their ceasing to hold office that should be brought to our attention (see Section G);
- (f) there is no evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (g) the auditor provides written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, subject to our approval of the resignation;
- (h) where the licensee is a body corporate, the auditor provides a signed copy of a directors' or members' resolution appointing a replacement auditor, subject to our approval of the resignation; and
- (i) the application is lodged with us before the end of the licensee's financial year.

RG 26.70 Our consent will be conditional on the auditor's report being lodged within the legislative timeframes

Resignations that take effect on another date

RG 26.71 If a trust account auditor wishes to resign on a date *other than* within one month after lodgement of the audit report, early consent circumstances must exist. The auditor must still provide all of the information outlined in RG 26.69. We will assess each application on its merits, giving consideration to the following:

- (a) whether early consent circumstances have been shown to exist (see Table 2 and Table 3);

- (b) the timing of the proposed resignation, including the impact on the effectiveness of the audit process;
- (c) whether the auditor has fulfilled all of their obligations under the National Credit Act; and
- (d) whether there is any evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial.

Replacement of an auditor

RG 26.72 We expect that the replacement of a trust account auditor, which has been approved by us, will take effect within one month after lodgement of the audit report for the credit licensee's financial year. If the replacement of a trust account auditor is proposed to take effect on a date *other than* within one month after lodgement of the audit report for the financial year, early consent circumstances must exist.

RG 26.73 We will assess each application for the replacement of a trust account auditor on a case-by-case basis, giving consideration to:

- (a) any early consent circumstances (see Table 2 and Table 3);
- (b) the timing of the proposed replacement, including the impact on the effectiveness of the audit process;
- (c) whether there is any evidence of opinion shopping (see RG 26.84–RG 26.85) or of the audit proving to be controversial;
- (d) a letter from the auditor stating that, other than as notified to ASIC, there are no disputes with the licensee connected with the auditor's replacement;
- (e) whether the licensee has notified the auditor in writing of their application to ASIC for approval of the replacement at about the same time as the application is made to us;
- (f) whether the licensee has provided written confirmation from the proposed replacement auditor stating that they are prepared to accept the appointment, subject to our approval of the auditor's replacement;
- (g) where the licensee is a body corporate, whether the licensee has provided a signed copy of a directors' or members' resolution appointing a replacement auditor, subject to our approval of the replacement of the outgoing auditor; and
- (h) whether the application is lodged with us before the end of the licensee's financial year.

RG 26.74 On receipt of an application for our approval of the replacement of a trust account auditor, we may seek a written representation from the auditor about the circumstances of the replacement. The auditor should, within seven days

after receiving a letter from us, make a representation to us if they are of the opinion that:

- (a) they should not be replaced;
- (b) there are concerns that the quality, independence and integrity of the audit function would not be preserved if we give our consent; or
- (c) there are matters that should be reported to us under s104 of the National Credit Act.

When should you lodge an application for ASIC's consent?

RG 26.75 In general, we expect an application for our approval to the resignation of a trust account auditor to be lodged with us before the end of the credit licensee's financial year.

RG 26.76 If a credit licensee wishes to replace a trust account auditor, we generally expect the application to be lodged with us before the end of the licensee's financial year.

F Auditor rotation

Key points

This section gives guidance on our approach to the resignation or removal of auditors of listed companies or listed registered schemes as a result of the auditor rotation requirements in Div 5 of Pt 2M.4 of the Corporations Act.

- RG 26.77 Auditor rotation is one of the auditor independence requirements in Div 5 of Pt 2M.4, introduced as part of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (CLERP 9 Act): see RG 187 for further information.
- RG 26.78 Under s324DA, the rotation requirements apply only to auditors conducting an audit of a listed company or listed registered scheme under Ch 2M. The auditor rotation requirements specify a limited term of five successive financial years for an individual auditor to play a significant role in the audit (which may be extended to seven successive financial years, in certain circumstances, if ASIC gives relief or, as from 25 July 2012, if the directors give approval: see amendments made to s324DA by the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*).
- RG 26.79 If the auditor of an audited body for a financial year subsequently becomes aware that they are not eligible to play a significant role in the audit during that financial year, and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2), rather than provide a notification of their ineligibility.
- RG 26.80 Paragraph 89 of Prudential Standard CPS 510 *Governance*, made under the *Banking Act 1959*, imposes a time limit of five years for the auditor of an authorised deposit-taking institution (ADI).
- RG 26.81 If a company is an ADI, and the auditor is not eligible to continue as auditor because they would be in contravention of the rotation requirements of Prudential Standard CPS 510 and there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit, the auditor should resign under s329(5) or 331AC(2). This will normally be considered an early consent circumstance.
- RG 26.82 Extending the auditor rotation period is dealt with in RG 187.

G Circumstances that should be brought to ASIC's attention

Key points

This section provides details of the circumstances connected with an auditor's ceasing to hold office that should be brought to our attention.

We expect outgoing auditors to notify us if:

- the independence of the audit function is not being preserved (see RG 26.83);
- the outgoing auditor is aware that their resignation, removal or replacement may be connected with opinion shopping (see RG 26.84–RG 26.85); or
- there are any changes in the audit firm or practice structure as the result of a merger, acquisition or dissolution (see RG 26.86–RG 26.87).

Loss of independence

- RG 26.83 If the notification of a conflict of interest situation has not complied with the requirements of s327B(2A)–(2C) or 331AAA(2A)–(2C), the auditor appointment ceases, and our consent to the resignation is not required. However, in all instances, the auditor independence requirements in Div 3 of Pt 2M.4 require the auditor to notify us promptly within the prescribed timeframe after becoming aware of the existence of a conflict of interest situation.

Opinion shopping

- RG 26.84 'Opinion shopping' is the practice of searching for an auditor willing to support a proposed accounting treatment. It involves a client communicating with an auditor about their views on specific or proposed accounting treatments before a new appointment. We will be unlikely to consent to an application for the resignation, removal or replacement of an auditor that we consider appears to be connected in any way to opinion shopping.
- RG 26.85 An auditor approached by an entity's directors to be appointed as auditor may choose to alert the directors about concerns with the entity's accounting treatments, but must not in any way confirm whether any treatments or proposed treatments are acceptable, or respond to requests from the entity itself for such information.

Changes in the audit firm or practice structure

- RG 26.86 If a proposed change in auditor is affected by impending changes in the audit firm or practice structure as the result of a merger, acquisition or dissolution, the auditor should advise us in writing so that we can consider the matter before starting to process the application for resignation, removal or replacement: see Table 3 (example 5) in the appendix for further information on changes in the audit firm or practice structure.
- RG 26.87 If an audit firm that is a partnership is dissolved, or has been dissolved, before our consent to the auditor's resignation or removal has been obtained, s324AB(1)–(2) and regs 7.8.15(2)–(3) of the Corporations Regulations cause the audit to vest in each member of the firm who is a registered company auditor. The appointment of such a member as auditor is not affected by the dissolution (except in circumstances relating to the reconstitution of a firm: s324AC and regs 7.8.15(4)–(5)). We therefore expect the provisions of the Corporations Act relating to the resignation and removal of auditors to apply to each registered company auditor of the firm.

H Process for applying to ASIC for consent

Key points

We will assess each application for the resignation, removal or replacement of an auditor based on the information submitted with the application: see RG 26.88–RG 26.93.

We will form a view about whether to consent to an application, and provide written notice of our decision: see RG 26.94–RG 26.95.

Applicants may apply for a review of our decision if we refuse an application: see RG 26.96–RG 26.98.

- RG 26.88 An application to ASIC for our consent to the resignation, removal or replacement of an auditor must be made in writing. Where a form has been approved by us for the purpose of the resignation, removal or replacement of an auditor, the application should be made using that form.

Note: For a complete list of all relevant ASIC forms, see ‘Related information’.

- RG 26.89 Where an application for consent has been lodged with ASIC, the auditor continues to hold office until consent has been granted. Therefore, it is important that auditor arrangements should not be changed before our consent is received.

Where to lodge your application

- RG 26.90 Application forms should be lodged at:
 Australian Securities and Investments Commission
 PO Box 4000
 Gippsland Mail Centre VIC 3841

What happens if you fail to provide the required information?

- RG 26.91 If application forms lodged with us are incomplete or deficient, they will be sent back to the applicant for further information or correction. Examples of deficient applications include the omission of the application fee with the lodgement, using the incorrect application form for the intended purpose, and providing incomplete information on the application form.
- RG 26.92 Applications seeking our consent for the resignation, removal or replacement of an auditor that do not sufficiently address the matters referred to in Sections A–G above, and that are incomplete or deficient, will not be assessed by us until all relevant information is provided. In this instance, you will be sent an ‘Intent to refuse’ letter, together with the application seeking

correction of its deficiencies and requesting further information to support the application.

What will ASIC do if we have concerns about the application?

- RG 26.93 If we have concerns about the resignation, removal or replacement of an auditor—whether these are brought to our attention in the application or otherwise—we will assess the nature of the concerns before determining whether to consent to, or refuse, the application. Further procedures may be initiated by us, and these may include one or more of the following:
- (a) requesting the auditor or the entity to provide additional information;
 - (b) convening a hearing under s51 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); and
 - (c) requiring, as a condition to our consent to the application, that the entity make disclosures about the reasons for the change in the audit appointment to the members of the company and/or members of the registered scheme and, if appropriate, to the market.

What happens after ASIC makes a decision?

- RG 26.94 For auditor resignation applications, we will advise both the auditor and the entity in writing once our decision has been made.
- RG 26.95 For auditor removal or replacement applications (other than the removal of a company auditor under s329), we will notify the entity in writing of our decision. The entity should give written notice of our decision to the auditor. Such notice should not be given until after notification of our decision has been received by the entity.

How can you apply for a review of a decision made by ASIC?

- RG 26.96 You will be able to apply to the Administrative Appeals Tribunal (AAT) for a review under s1317B if you are not satisfied with our decision: see Regulatory Guide RG 57 *Notification of rights of review* (RG 57).
- RG 26.97 You may apply to ASIC under s28 of the *Administrative Appeals Tribunal Act 1975* (AAT Act) to obtain the reasons for our decision. An application for a statement of reasons should be made in writing and should be lodged with ASIC within 28 days after the date of our notice of refusal.
- RG 26.98 If you choose to apply for a review of our decision without seeking a formal statement of reasons under s28 of the AAT Act, this written application should be lodged with the AAT within 28 days after the date of ASIC's notice of refusal.

Appendix: Early consent circumstances

Factors indicating that early consent circumstances exist

RG 26.99 Early consent circumstances occur when it is inappropriate or impractical for an auditor to complete an audit. We will make determinations on a case-by-case basis to ensure that the independence and integrity of the audit are preserved. Table 2 sets out some non-exhaustive examples of factors that may influence us in considering whether early consent circumstances exist when assessing an application for the resignation, removal or replacement of an auditor.

Table 2: Examples of situations that may be considered early consent circumstances

Type	Explanation
1 Failing health of the auditor	This would apply only to individual appointments, or to a practice that has only one registered company auditor.
2 Loss of auditor independence	<p><i>(a) Conflict of interest situations</i></p> <p>This relates to the requirements in Div 3 of Pt 2M.4. If the notification of a conflict of interest situation has not complied with the requirements of s327B(2A)–(2C) or 331AAA(2A)–(2C), the auditor appointment ceases. In all instances, Div 3 requires the auditor to notify ASIC promptly within the prescribed timeframe after becoming aware of the existence of a conflict of interest situation.</p> <p><i>(b) Auditor rotation</i></p> <p>This is one of the auditor independence requirements in Div 5 of Pt 2M.4, and applies only to auditors of listed companies or listed registered schemes. The requirement to rotate an individual auditor will only be considered to be an early consent circumstance if there are no other members of the firm or directors of the audit company eligible to play a significant role in the audit.</p> <p>Note: See RG 26.77–RG 26.82.</p>
3 Entity is not audited by the same auditor as its parent entity	<p>There is potential for greater audit effectiveness if there is one auditor for all the entities in a group. After a company is taken over, the auditor's appointment automatically ceases at the next AGM (they must retire at the AGM): see s327H. However, the appointment of the auditors of its subsidiaries does not automatically cease. Details of the parent entity and timing of the change of structure must be provided. We will also consider changes in a parent entity auditor to align with the auditor of a larger operating subsidiary entity.</p>
4 Relocation of the entity's or auditor's principal place of business or practice	<p>This applies to situations where the relocation could result in circumstances where it would be impractical for an auditor to perform the audit, despite the provisions of s310 and 990I of the Corporations Act, and s102 of the National Credit Act. The auditor must show why it would be impractical to perform the audit. An early consent circumstance is unlikely to exist if the firm has an audit office in the new location of the entity.</p>
5 Lack of specialist skills or knowledge of the auditor	<p>This may apply where the current auditor no longer possesses the necessary expertise to audit the audited body. The audited body and the auditor must be able to demonstrate the skills or knowledge required (e.g. specialist industry knowledge, access to international affiliations).</p>

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Type	Explanation
6 Single member public companies	This is where a public company that has a single member who is an individual elects not to hold an AGM. Note: See RG 26.30–RG 26.31.
7 Ineligibility of auditor	This occurs when an auditor is ineligible to act because of the operation of various provisions of the Corporations Act and National Credit Act, as well as enforceable undertakings under s93AA of the ASIC Act. In some cases, the auditor will automatically lose office as auditor. Auditors need to be aware that deliberately causing a breach of the independence requirements of the Corporations Act is an offence under s324CM.

Factors indicating that early consent circumstances do not exist

RG 000.100 We will make determinations on a case-by-case basis. Table 3 sets out some non-exhaustive examples of factors that will generally influence us in considering whether early consent circumstances *do not* exist.

Table 3: Examples of situations that may *not* be considered early consent circumstances

Type	Explanation
1 Registered scheme is not audited by the same auditor as its responsible entity and/or other schemes under the same responsible entity	We consider that there is no relevant 'parent/subsidiary' relationship unless there are majority cross-holdings between the schemes and their responsible entity, and the financial reports of the schemes are consolidated with those of their responsible entity and/or other schemes.
2 Relocation of the entity's or auditor's principal place of business or practice, where the auditor is a firm that is part of a national firm with multiple offices	Other offices of the firm may be able to perform the audit.
3 Tendering	An entity is entitled to change its auditor based on the outcome of a tender. Balancing this freedom of choice is the need for the auditor to be independent in the expression of their audit opinion. Independence should not be undermined by insecurity of tenure at the time of completing the audit. Entities should plan their audit tendering processes to ensure that auditors know whether their appointment will be continuing at the time of completing the audit and that any resignation takes effect at the next AGM.
4 Auditor rotation	This applies where the rotation results from internal firm rotation policies, or where an entity is not a listed entity.
5 Changes in the audit firm structure	<i>(a) A change from an audit firm to an authorised audit company</i> The Corporations Act does not provide arrangements for the transition of an audit from the audit firm to an authorised audit company. The normal resignation timing is expected to apply.

Type	Explanation
	<p><i>(b) Reconstitution or dissolution of a firm</i></p> <p>This applies where one firm has merged with another, resulting in a new firm being created or the continuation of one of the firms and the dissolution of the other.</p> <p><i>(c) A change of firm name</i></p> <p>This does not affect the appointment of the firm or its ability to conduct the audit.</p> <p><i>(d) Premature dissolution of a firm that is a partnership</i></p> <p>This applies where an audit firm is dissolved, or has been dissolved, before our consent to the resignation or removal has been obtained, and s324AB(1)–(2) and regs 7.8.15(2)–(3) of the Corporations Regulations cause the audit to vest in each member of the firm who is a registered company auditor. The appointment of each member as auditor is not affected by the dissolution.</p> <p>Note: See RG 26.87.</p>
<p>6 Premature commencement of work</p>	<p>This applies where a new auditor commences work before our consent has been granted to the resignation or removal of the outgoing auditor.</p>
<p>7 Non-payment of audit fees</p>	<p>This occurs where there is a lack of ability or preparedness to pay audit fees and/or there are outstanding audit fees.</p>
<p>8 Lack of resources of the auditor</p>	<p>Auditors are expected to have adequate resources to conduct quality audits. We may consider situations where the auditor can demonstrate circumstances that were unforeseen and completely outside their control, and cannot be adequately addressed.</p>

Key terms

Term	Meaning in this document
AAC	An authorised audit company registered under Pt 9.2A of the Corporations Act
AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
AGM	Annual general meeting held by a company
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Ch 2M (for example)	A chapter of the Corporations Act (in this example numbered 2M)
CLERP 9 Act	<i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004</i>
conflict of interest situation	Has the meaning given in s324CD of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
early consent circumstances	Circumstances where it is inappropriate or impractical for an auditor to complete an audit
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Regulations	National Consumer Credit Protection Regulations 2010

Term	Meaning in this document
play a significant role	Has the meaning given in s9 of the Corporations Act
Pt 2M.4 (for example)	A part of the Corporations Act (in this example numbered 2M.4)
proprietary company	Has the meaning given in s9 of the Corporations Act
public company	Has the meaning given in s9 of the Corporations Act
reg 19(4) (for example)	A regulation of the National Credit Regulations (in this example numbered 19(4)), unless otherwise specified
RG 57 (for example)	An ASIC regulatory guide (in this example numbered 57)
rights of review	The right to have ASIC's decision reviewed by the AAT
registered scheme	A registered managed investment scheme
s310 (for example)	A section of the Corporations Act (in this example numbered 310), unless otherwise specified
trust account auditor	Auditor of a credit licensee trust account

Related information

Headnotes

AFS licensees, AGM, annual general meeting, application for consent, appointment of auditor, audit report, auditor independence, auditor rotation, cessation of auditor, compliance plans, conflicts of interest, credit licensees, deliberate disqualification, directors' resolution, early consent circumstances, lodgement of application, lodgement of report, managed investment schemes, members' resolution, opinion shopping, registered schemes, relocation, removal of auditor, replacement of auditor, reporting obligations, resignation of auditor, rights of review, trust account audit report, trust account auditor

Regulatory guides

RG 34 *Auditor's obligations: Reporting to ASIC*

RG 57 *Notification of rights of review*

RG 187 *Auditor rotation*

Legislation

AAT Act, s28

ASIC Act, s51, 93AA

Banking Act 1959, Prudential Standard CPS 510, paragraph 89

CLERP 9 Act

Corporations Act, Divs 2, 3 and 5 of Pt. 2M.4; s250N(4), 310, 311, 324AB(1), 324AB(2), 324AC, 324CM, 324DA, 327B(1), 327B(2A), 327(2B), 327(2C), 327H, 328B, 329(1), 329(5), 329(6), 329(8), 329(9), 331AAA(2A), 331AAA(2B), 331AAA(2C), 331AC(1), 331AC(2), 331AC(3), 331AC(5), 331AD, 601HG(2), 601HG(4), 601HG(4A), 601HG(4B), 601HH(1), 601HH(2), 601HH(3), 601HH(5), 990D(2), 990F(b), 990G(1), 990G(2), 990H, 990I, 990K, 1317B

Corporations Regulations, regs 7.8.15(4), 7.8.15(5), 7.8.16

National Credit Act, s102, 104

National Credit Regulations, regs 19(4)(d), 19(4)(e)

Information sheets

INFO 62 *Removal of an auditor under the Corporations Act 2001*

INFO 64 *Resignation and removal of auditors of registered schemes or compliance plans*

INFO 65 *Resignation of an auditor under the Corporations Act 2001*

ASIC forms

Form 315 *Notification of resignation, removal or cessation of auditor*

Form 342 *Application for consent to resign as an auditor*

FS07 *Application for consent to remove an auditor of an Australian financial services licensee*

FS08 *Application for consent to resign as an auditor of an Australian financial services licensee*

FS09 *Notification of cessation of an auditor of an Australian financial services licensee*

Form 5132 *Application for consent from ASIC for resignation or removal of scheme auditor*

Form 5133 *Notification of resignation, removal or cessation of a registered scheme auditor*

CL17 *Australian credit licence—Application for approval to replace a trust account auditor*

CL18 *Australian credit licence—Application for approval to resign as a trust account auditor*

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