



**ASIC**

Australian Securities & Investments Commission

**REPORT 391**

# **ASIC's deregulatory initiatives**

May 2014

## **About this report**

This report provides an overview of ASIC's commitment to reduce compliance costs for our regulated population, including ongoing work and new initiatives.

It should be read by all businesses and individuals who are required to comply with laws and regulations administered by ASIC and those who have an interest in engaging with ASIC on our approach to deregulation.

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## A Our mandate and approach to cutting red tape

### Key points

ASIC is specifically required to strive to reduce business costs and administer the law effectively with a minimum of procedural requirements. We have recently made significant progress in reducing the burden of red tape for businesses and individuals, and have a number of ongoing and new deregulatory initiatives.

- 1 ASIC's mandate under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) specifically requires us to strive to reduce business costs and administer the law effectively with a minimum of procedural requirements. Our mandate clearly requires a balance between:
  - facilitating markets and business; and
  - safeguarding those markets to ensure stability and to promote confident and informed participation by investors and consumers in the financial system.
- 2 This is reflected in our strategic priorities, which are to ensure:
  - confident and informed investors and financial consumers;
  - fair and efficient markets; and
  - efficient registration and licensing.
- 3 We will continue to reduce red tape for individuals and businesses and will work with Treasury to propose changes to the law where we see a net regulatory benefit, or where a minimal regulatory detriment is clearly outweighed by compliance cost savings. This will be achieved through both new and ongoing deregulatory initiatives. We have already made significant recent progress in reducing the burden of red tape for businesses and individuals, which will contribute to the Government's \$1 billion red-tape reduction target.
- 4 Our previous work on deregulatory initiatives—such as 'Better Regulation',<sup>1</sup> 'Rethinking Regulation' and our work on the Corporate and Financial Services Regulation Review<sup>2</sup> in 2005 and 2006—are also examples of our commitment to reducing red tape to make it easier for regulated businesses to meet their obligations.

<sup>1</sup> See, for example, *Better regulation: ASIC initiatives*, report, ASIC, April 2006,

[www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Better\\_regulation.pdf/\\$file/Better\\_regulation.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/Better_regulation.pdf/$file/Better_regulation.pdf).

<sup>2</sup> See Media Release (06-402MR) *ASIC welcomes regulation review proposals paper* (17 November 2006), [www.asic.gov.au/asic/asic.nsf/byheadline/06-402+ASIC+welcomes+regulation+review+proposals+paper](http://www.asic.gov.au/asic/asic.nsf/byheadline/06-402+ASIC+welcomes+regulation+review+proposals+paper).

## Our approach to deregulation

- 5 We take a broad approach to deregulation. We believe the following are the key areas that contribute to the goal of reduced regulatory burden and lower compliance costs for the people and businesses we regulate:
- reducing the total number of regulations that must be complied with;
  - removing existing regulation that is onerous, excessive or does not serve clear policy goals;
  - increasing the clarity of regulatory requirements to ensure regulation is more effective by being easier and less costly to comply with;
  - ensuring regulatory requirements are set out in as few locations as possible, to make it easier for businesses to understand their obligations and how to comply with them;
  - considering alternative or non-government regulation where appropriate, including self-regulation and co-regulation;
  - reducing the cost of complying with regulation—for example, by reducing the number of processes that are required to be satisfied, or the number of times a person has to interact with a government agency; and
  - improving the processes by which regulation is developed and ensuring that any regulation developed is well designed to meet its policy goals.
- 6 For most of these areas, our role is primarily to use our regulatory experiences and our relationships with, and insights into, businesses and markets to identify where changes might be valuable and alert Government to these areas, as well as contribute to policy development.
- 7 We have the most impact regarding reducing the cost of complying with regulation by working closely with businesses and individuals to ensure that our activity does not introduce unnecessary additional regulatory requirements, and providing guidance and relief where appropriate. We also strive to adopt a risk-based approach to regulation so that our actions are appropriate and proportionate—for example, the level of information we seek from Australian financial services (AFS) licence applicants depends on a risk assessment.
- 8 As well as specific deregulatory projects, much of our business-as-usual work reduces the regulatory burden for businesses complying with the legislation we administer. For example, our regulatory guidance helps businesses comply with their obligations, and our class order and individual waivers from the law facilitate business.
- 9 We promote accountability and transparency in our actions by working closely with stakeholders to develop our guidance and to address issues promptly, as well as encouraging and monitoring the role of key gatekeepers such as auditors, liquidators and directors. We also seek regular feedback on

our performance and change our processes and practices in response to this feedback. We want to achieve our and the Government's regulatory goals in a way that ensures businesses are able to comply with the law with as little effort and paperwork as possible.

## Overview of our deregulatory initiatives

- 10 Much of our ongoing work minimises compliance costs and red tape. To complement our ongoing work we periodically undertake specific initiatives targeted at reducing compliance costs and burdens for regulated businesses. The following initiatives, which are discussed in Section B, are examples of initiatives that have delivered compliance cost savings:
- continuing to provide waivers from the law ('relief') where there is a net regulatory benefit in doing so;
  - promoting recognition of Australian laws and substituted compliance through our international work;
  - engaging with the regulated population to improve our guidance and communication, including the launch of a new online hub dedicated to small business;
  - an update to the AFS licence application process; and
  - simplification of business names registration.
- 11 Subject to feedback on this report, we are also planning work in the following areas (discussed in Section C) to reduce red tape and the regulatory burden for individuals and businesses:
- streamlining ASIC forms;
  - discussing possible legislative changes with Treasury;
  - removing barriers that inhibit innovation in disclosure;
  - harmonising ASIC market integrity rules;
  - 'sunsetting' class orders (class waivers) that are no longer required and reviewing the conditions of continuing class orders;
  - improvements to auditor resignation requirements to allow more flexibility for public companies; and
  - strengthening our engagement and communication with our regulated population.

### ASIC's deregulation team

- 12 We have set up a deregulation team within ASIC to further work on our deregulatory initiatives, to identify further initiatives and to ensure that all of our work continues to be undertaken with a view to minimising red tape for

our regulated population. To promote this focus right across ASIC, we have taken a number of steps to foster a deregulatory culture, including engaging all staff through ASIC-wide presentations and establishing a single email portal to encourage all staff to identify opportunities to cut red tape and to feed those ideas back to the deregulation team.

- 13 The deregulation team is also working closely with Treasury, the Office of Best Practice Regulation and the Government to identify and cut red tape.

## Feedback

- 14 We welcome feedback on the specific initiatives in this report and, more broadly, on particular areas where we can make it easier for businesses and individuals to meet their obligations under the laws and regulations we administer, where doing this does not undermine our strategic priorities of ensuring investors and financial consumers are confident and informed and markets are fair and efficient.

- 15 We are seeking specific proposals that provide a net regulatory benefit, or a minimal regulatory detriment that is clearly outweighed by a demonstrated commercial benefit.

- 16 In particular, we seek views on:

- any changes that might be made to ASIC forms;
- suggestions for regulatory change that ASIC might discuss further with Treasury and the Government; and
- any changes that might be made to ASIC processes or procedures.

- 17 While we welcome ongoing feedback, initial comments are invited by 18 June 2014.

- 18 Please provide feedback to:

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Australian Securities and Investments Commission  
GPO Box 9827 Melbourne VIC 3001  
Email: [deregulation@asic.gov.au](mailto:deregulation@asic.gov.au)

## B Our ongoing work and recent progress

### Key points

Much of our ongoing work and some of our recent projects have delivered or are expected to deliver substantial compliance cost savings for regulated businesses. While this report does not attempt to account for the entirety of our action to reduce compliance costs, the examples in this section provide a snapshot of recent achievements and ongoing work to cut red tape and reduce costs for business. The initiatives highlighted include:

- continuing to provide waivers from the law ('relief') where there is a net regulatory benefit in doing so;
- promoting recognition of Australian laws and substituted compliance through ASIC's international work;
- engaging with the regulated population to improve our guidance and communication;
- an update to the AFS licence application process; and
- the simplification of business names registration.

### Waivers from the law ('relief')

- 19 ASIC has powers under the *Corporations Act 2001* (Corporations Act) to exempt a person or a class of persons from the law and to modify the law in many cases. We use our discretion to vary or set aside certain requirements of the law where there is a net regulatory benefit, or where the benefits of facilitating business outweigh the regulatory detriment. Guidance on when we will grant relief is set out in Regulatory Guide 51 *Applications for relief* (RG 51) and other ASIC policies. Our relief makes the law more adaptable and facilitates innovations in products, services or transactions.
- 20 Businesses frequently approach ASIC for assistance to help make the law work better through class orders or individual relief and waivers. In determining relief applications (both class order relief and individual relief applications), we are transparent about the policy we apply. We make consistent decisions and engage with applicants throughout the process.
- 21 In 2013 we granted 52 class orders and received 2,744 individual relief applications. Around 85% of individual applications were approved for relief.

## Savings to business as a result of our international work

- 22 Our international engagement includes contributing to the development of international regulation as well as securing recognition of Australian laws and substituted compliance, resulting in compliance savings for businesses operating across jurisdictions. Below are two examples of how our recent international work has achieved real savings for business.

### OTC substituted compliance

- 23 We have been implementing international principles and standards resulting from the G20 over-the-counter (OTC) derivatives reform process, such as the CPSS–IOSCO *Principles for financial market infrastructures*. Implementing international standards facilitates cross-border activity by increasing the likelihood that Australian regulatory regimes will be judged equivalent by foreign regulators. This:
- enables Australian entities that are subject to the rules of foreign regulators to use compliance with Australian laws in satisfaction of the foreign rules, reducing the cost of compliance with multiple regulatory regimes; and
  - facilitates recognition of Australian entities by foreign regulators, minimising the potential compliance burden for Australian entities seeking to enter foreign markets.
- 24 An example of this has been our work with the European Securities and Markets Authority (ESMA) and the US Commodity Futures and Trading Commission (CFTC). In 2013, we worked with the Council of Financial Regulators, in particular APRA, and industry and obtained positive equivalence assessments from ESMA<sup>3</sup> and the CFTC to have aspects of Australia's regulatory regime on OTC derivatives considered equivalent or comparable to the regimes in the European Union. In addition, in 2013 the CFTC approved substituted compliance for Australia in relation to a number of requirements applying to swap dealers.
- 25 By ensuring consistency with international standards and by aligning our rules to those already in place in other major jurisdictions, our approach has also enabled market participants to leverage existing infrastructure and relationships, such as those established with derivative trade repositories for trade reporting, and minimise costs associated with implementing new requirements.
- 26 We estimate that this initiative will deliver significant initial and ongoing compliance cost savings. We have also continued to provide transitional

<sup>3</sup> ESMA has made a recommendation to the European Union in relation to substituted compliance for Australia. As at 5 May 2014, the European Union had not yet decided on this recommendation.



relief (beyond that mentioned above) to a range of reporting entities, delivering significant savings to those entities.

### **Alternative investment funds: EU offerings**

- 27 In July 2013 we entered into 29 supervisory cooperation arrangements with EU securities regulators, agreeing to help each other supervise fund managers operating across borders. The cooperation is crucial in allowing Australian fund managers to manage and market alternative investment funds (AIFs) to professional investors in the European Union under the rules of the Alternative Investment Fund Managers Directive (AIFMD). AIFs include hedge funds, private equity funds and real estate funds, among others.
- 28 The agreements we have entered into will enable funds to take advantage of the private placement exception under AIFMD, rather than seeking authorisation under the directive, resulting in substantial compliance cost savings for those funds.

## **Guidance and communication**

- 29 ASIC knows that the way we apply the law and the way in which we communicate with the people we regulate has a significant impact on the way those people experience regulation.
- 30 Engagement with industry and stakeholders is one of our key regulatory tools. We are conscious that the burden of regulation can be different, and can be perceived differently, depending on the approach of the regulator. We are therefore committed to broad and deep consultation and provide substantial resources to help people comply with the law. As part of this, ASIC teams and the ASIC Commission meet regularly with stakeholders and we have six key external committees and panels that inform our work.

### **Small business**

- 31 Small business is our largest stakeholder group. Of all the Australian companies and businesses registered with us, approximately 96% are considered to be small businesses. Improving the service we provide to small businesses is one of our key priorities.
- 32 We have recently launched a range of tools specifically designed for small businesses, including guides, newsletters, and a dedicated online hub. The new online hub dedicated to small business was launched in November 2013. Links are prominently displayed on the home page of the ASIC

website. The online hub provides relevant information for small business operators in a format that is easy to access and understand.

- 33 The small business hub includes 'one-minute guides' to various compliance topics, answers to frequently asked questions and acts as a signpost to more detailed information contained in other parts of our website. Small business owners can also subscribe to an eNewsletter, sent out on a quarterly basis.
- 34 Since its launch, the small business hub has been accessed more than 13,000 times and the feedback from small business owners has been positive. In August 2013, we also released a practical guide about small business compliance obligations, *Your obligations as a small business operator*, which is available in hard copy and online. Approximately 10,000 hard copies have been distributed and the feedback from small business owners has been positive.
- 35 We have also recently launched our second Small Business Survey. While we undertake regular surveys of our regulated population, we appreciate that small business operators can have different experiences in dealing with us and complying with their obligations compared to other entities that we regulate. This survey will give a voice to small business operators and facilitate continuous service improvement in our interactions with these very important stakeholders.

### **Cooperation between regulators: APRA and ASIC reporting standards**

- 36 We are aware that many regulated entities deal with a number of regulators and the interaction between the requirements imposed and administered by different regulators can cause concern. As such, we work closely with our fellow financial regulators to articulate our role, minimise overlap and streamline requirements where possible.
- 37 For example, ASIC and APRA recently issued a joint letter to registrable superannuation entity (RSE) licensees to clarify the relationship that exists between ASIC disclosure requirements and the data required to be reported to APRA under s29QC of the *Superannuation Industry (Supervision) Act 1993*.
- 38 The purpose of the s29QC requirements is to improve the comparability of information about superannuation products and the letter explained the role of each regulator, the implications of s29QC and also ASIC's compliance approach. We have also updated the frequently asked questions on our website's superannuation page to include guidance on what information must be aligned with APRA's reporting standards.

## Regulatory guidance

- 39 Through our regulatory guidance we try to provide clear and consistent messages to the people we regulate about how we will apply the law and how businesses can ensure they are meeting their compliance obligations. We will update and produce guidance in consultation with stakeholders as needed.
- 40 For example, we recently updated Regulatory Guide 107 *Fundraising: Facilitating electronic offers of securities* (RG 107) to facilitate and encourage the use of the internet and other interactive media for making offers of securities. The updated policy benefits companies looking to raise capital quickly and gain market opportunities, and recognises that there are many advantages to using the internet and other electronic means to distribute disclosure documents and application forms (e.g. information can be easier to access, read and understand for investors).

## Improvements to the AFS licence application process

- 41 In early 2012 we reviewed the AFS licence application and our internal process to assess applications for AFS licences. We amended the online licence application by removing 46 questions and rewording a majority of the remaining questions to increase usability of the application.
- 42 We also removed some of the certifications required when submitting supporting documents and enabled applicants to submit the supporting documents to an email account rather than in hard copy. This means the 1,300 or so AFS licensees or potential licensees who use this form each year can use it more easily and more quickly.
- 43 We estimate that this initiative has saved more than 10,000 hours of compliance time each year for potential AFS licensees, many of whom are small businesses.

## Simplification of business names registration

- 44 The Business Names Register, launched in May 2012, replaced eight state and territory systems and simplified business registration in Australia by offering a single online service to register, renew and search business names. Businesses can apply to register or renew a business name online and in most cases receive confirmation of their registration straight away. As a consequence, 99.9% of business name registrations are completed online and costs for registering a business name have come down. There is also a joint process for registering for an Australian Business Number (ABN) and a national business name, the two most common registrations when starting a business.

## C New initiatives

### Key points

We are progressing work on new initiatives that are consistent with the Government's objective and will result in a reduction of red tape and regulatory burden for individuals and businesses, including:

- streamlining ASIC forms;
- discussing possible legislative changes with Treasury and the Government;
- removing barriers that inhibit innovation in disclosure;
- harmonising ASIC market integrity rules;
- 'sunsetting' class orders (class waivers) that are no longer required;
- improvements to auditor resignation requirements; and
- strengthening our engagement and communication with our regulated population.

### Streamlining ASIC forms

- 45 We collect a significant volume of information from our licensees and stakeholder groups through forms both prescribed by legislation or by ASIC to meet information requirements set under legislation. We have recently identified and catalogued 362 forms that we receive.
- 46 The 362 forms that comprise the data catalogue were examined to identify opportunities for reducing the regulatory burden on stakeholders. Forms were examined to ascertain whether they could be either removed if the information was not required or used regularly by ASIC or the public, or consolidated or streamlined to lessen the burden on business of providing this information to ASIC. Our preliminary analysis has identified that approximately 10% of forms could be removed, consolidated or streamlined.
- 47 Appendix 1 lists the forms that might be considered for removal (see Table 1) and consolidation or simplification (see Table 2). A number of the forms identified for removal are currently required to be provided to ASIC under the law, but provide information that might not be necessary for ASIC to hold. Subject to stakeholder comments, we may suggest that these forms be removed through legislative amendment.

## Proposed legislative reform to facilitate business

- 48 We have undertaken a preliminary process to identify:
- potentially redundant or no longer justified legislative and regulatory provisions; and
  - provisions that might be reformed to reduce business compliance costs with little regulatory detriment, or with regulatory benefits.

This resulted in the following deregulatory proposals, about which we are seeking further comment.

### Simplifying wholly owned financial reporting relief

- 49 We provide relief from the law requiring all companies to prepare, audit and lodge financial reports for companies if they are the wholly owned subsidiary of another company that lodges financial reports, provided the companies enter into deeds of cross-guarantee and meet certain other conditions. However, our inability to modify the insolvency provisions of the Corporations Act means the relief provided in Class Order [CO 98/1418] *Wholly-owned entities* is complex.
- 50 This relief provides a substantial compliance cost saving to those entities that rely on it, but the complexity of the relief itself could be reduced by incorporating the relief directly into Ch 2M of the Corporations Act and making changes to the insolvency provisions of the Act to remove the need for deeds of cross-guarantee.

### Market stabilisation

- 51 Consideration might be given to consulting on whether there is a need for legislative amendment to allow market stabilisation activities in appropriate circumstances.
- 52 Market stabilisation aims to achieve a more orderly secondary market for securities following an initial issue or sale. An argument for market stabilisation is that it enhances confidence in the market for new issues or sales of securities and facilitates corporate fundraising. An offer of securities may lead to a fall in the price of those securities because of the sudden increase in supply and imperfections in the pricing and allocation process.
- 53 A number of other jurisdictions have legislated to facilitate stabilisation practices, including the United States, Hong Kong, New Zealand and the United Kingdom.
- 54 The Corporations Act prohibits a person from engaging in misleading or deceptive conduct, false trading and market rigging, and insider trading. Because market stabilisation activities are designed to have a price effect

that might not otherwise occur, this could be considered a breach of these provisions. We have previously undertaken to provide no-action letters where the risk of creating a false, misled or uninformed market is mitigated by conditions on market stabilisation activity. A no-action letter states to a particular person that we do not intend to take regulatory action over a particular state of affairs or particular conduct. Key to ASIC's provision of no-action letters are disclosure obligations clearly identifying on-market stabilisation activity and daily reports of aggregate stabilisation activity.

### **Enabling automatic registration for managed investment schemes under s601EB of the Corporations Act**

- 55 Rather than the current arrangement where we must grant registration of a managed investment scheme within 14 days, we suggest that managed investment schemes could be automatically registered when an application is lodged. To ensure that we could prevent the operation of non-compliant schemes, stop order and directions powers could also be incorporated into the law. Those provisions would, as an alternative to scheme deregistration, enable ASIC to stop any issue of interests on an interim and final basis, similar to Product Disclosure Statement (PDS) stop orders under s1020E, or make direct amendments to the constitution necessary to ensure compliance with the Corporations Act.
- 56 Although estimated compliance cost savings are relatively small, it would mean that schemes would be assessed, and subsequently monitored, using a risk-based approach. Only schemes assessed as higher risk would be scrutinised more closely.
- 57 We note that a similar suggestion has been made by the Corporations and Markets Advisory Committee (CAMAC) in the discussion paper, *The establishment and operation of managed investment schemes*.<sup>4</sup>

### **Replacing the requirement for an unlisted disclosing entity to lodge continuous disclosures with ASIC with a requirement to instead publish disclosures on the entity's website**

- 58 Unlisted disclosing entities must lodge material information with ASIC under s675 of the Corporations Act, even though this may not be the most effective way of communicating with investors. We currently administer the law as though publishing material information on a website is a substitute for lodgement with ASIC, provided disclosing entities comply with our good practice guidance: see Regulatory Guide 198 *Unlisted disclosing entities*:

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<sup>4</sup> CAMAC, *The establishment and operation of managed investment schemes*, discussion paper, March 2014, p. 53, [www.camac.gov.au/camac/camac.nsf/byHeadline/PDFDiscussion+Papers\\_1/\\$file/MIS\\_DP\\_MARCH2014.pdf](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFDiscussion+Papers_1/$file/MIS_DP_MARCH2014.pdf).

*Continuous disclosure obligations* (RG 198). However, disclosing entities are still legally required to lodge material information with ASIC.

- 59 Removing the obligation to lodge with ASIC and instead requiring an entity to disclose material information on its website, or giving the entity a choice to either lodge with ASIC or disclose on the entity's website, will lead to lower compliance costs for unlisted disclosing entities and better outcomes for consumers who will be able to access information on the entity's website rather than needing to search via ASIC (for which there is a fee).

### **Amending the content of the forms to be lodged under s671B (information about substantial holdings) to address market concerns**

- 60 Currently, the exact wording of the content of the forms to provide information about substantial holdings is mandated in Sch 2 of the Corporations Regulations 2001 (Corporations Regulations). We have received extensive feedback from industry that these substantial holding forms (Forms 603, 604 and 605) can be difficult to complete, and present the information in a confusing and unhelpful way.
- 61 If the regulations were amended to allow ASIC to prescribe the form, we would work with the market to design forms that provided information necessary for the market in a way that was simpler to understand and easier for the company filling out the form to complete.

### **Proposed minor or technical law reform**

We also invite feedback on more minor legislative changes (identified as part of our preliminary process) that we might raise with Treasury and the Government: see Table 3 in Appendix 2. These proposals are those where our preliminary view is that the burden of compliance with the regulation outweighs the benefits to consumers or the market or where provisions no longer have effect and could be cleared from the statute books after further consultation.

## **Removing barriers that inhibit innovation in disclosure**

### **Electronic disclosure**

- 62 We are undertaking a project to examine the regulatory and commercial barriers that inhibit electronic delivery of disclosure material right across our regulated population, including disclosures about financial services, consumer credit and securities. Feedback from our External Advisory Panel, the market and from Treasury consultation on modernising disclosure

suggests that there is issuer and consumer appetite for more electronic delivery of disclosure material.

63 There are a number of advantages to electronic delivery of disclosure, including convenience of delivery and updating, convenience of access and storage, timeliness of delivery, environmental savings, and security and privacy advantages. In particular, we expect an increase in electronic disclosure to reduce costs, specifically printing and distribution costs, for business.

64 We are currently undertaking targeted consultation with market participants to identify where the barriers lie to increased electronic disclosure, with a view to removing those barriers and facilitating more electronic disclosure where possible.

### **Investor self-assessment and key facts sheets**

65 Traditionally, disclosure regulation has focused on what information about the product must be disclosed by issuers, rather than tools to help investors understand the product. To address perceived limitations of this approach, we are exploring a proposal that would enable issuers of a simple managed investment scheme to give investors:

- *a key facts sheet with prescribed content*—links to additional information (provided by the issuer or third parties on a website) may also be given. This additional information would be optional and would not form part of the PDS; and
- *a tool for investors* to, should they wish to, assess their understanding of the facts outlined in the key facts sheet and (at a basic level) the suitability of the investment for them (investor self-assessment).

66 The key facts sheet and additional information could be given electronically and incorporate video, audio or interactive presentations. An issuer who adopts this approach would not need to issue a PDS that complies with the shorter PDS regime.

67 We expect the benefits of the proposal for product issuers to be:

- to give them early warning about whether investors understand their product and whether there is a problem with the disclosure material; and
- reduced compliance costs through issuers not needing to produce a PDS, only a short key facts sheet with the ability to link to additional material, as well as reduced costs of electronic distribution. The proposal would give issuers the opportunity to explore the use of new media in disclosure.



- 68 The benefit of the investor self-assessment for consumers is that it would give them the ability to test their understanding of the key features of the product before they invest.
- 69 We will work with a small number of product issuers to undertake a pilot to test the contents and delivery of the key facts sheet and the efficacy of the self-assessment in promoting investor understanding, as well as the benefits for issuers, before consulting more broadly.

## Harmonising ASIC market integrity rules

- 70 Currently, there are eight discrete market integrity rule 'books' that govern various market operators and market participants. We are undertaking a project to harmonise the ASIC market integrity rules of all exchanges operating in Australia, such that trading will take place on the basis of one set of minimum requirements. The aim of the harmonisation exercise is to create a single unified rule book for all market operators, market participants and exchange traded products. We are aiming to issue final, harmonised market integrity rules by the end of 2016, subject to any resourcing constraints.

## 'Sunsetting' legislative instruments

- 71 We administer approximately 400 class orders that are due to expire ('sunset') from 2015 under the *Legislative Instruments Act 2003*.
- 72 We have accelerated consideration of these instruments and have identified 47 instruments that we can repeal immediately. The remaining instruments will be either remade, if necessary, or subject to a substantive policy review to assess the need for the particular instrument.
- 73 Where it is necessary to remake instruments, we are focusing on making the instruments clear and user-friendly. We will also, where possible, simplify and rationalise the content and conditions of the instruments we remake. We will remove or reduce an obligation or burden in a class order if we are able to do so without undermining our priorities of confident and informed investors and financial consumers and fair and efficient markets.

## Improvements to auditor resignation requirements

- 74 Under s329(6) of the Corporations Act, the auditor of a public company can only resign with our consent. Our current policy is to consent to the resignation of an auditor at the next annual general meeting, unless there are exceptional circumstances. Subject to further consultation, we are proposing to implement a change to this policy so that auditors may resign at any time,

unless there is some evidence (such as disagreements with management) to suggest that we should not give consent to the resignation. Consent would be conditional on market disclosures being made about the details of both the resigning and incoming auditor, and the reason for the change.

- 75 This would more closely align with the approach in the United States and would allow more flexibility for public companies. We also propose similar improvements for changes of auditors of managed investment scheme financial reports and compliance plans, AFS licensees and credit licensee trust accounts.

## New guidance and communication projects

### ASIC strategic outlook

- 76 We are working towards giving industry greater transparency about the work we are doing to ensure a 'no surprises' approach to regulation. Engagement with industry through, for example, publishing a strategic outlook covering the risks consumers, markets and market participants face, and what regulatory responses we intend to pursue to address these, can help business understand our key priorities and reduce uncertainty that regulatory and other change can bring. It is our view that greater engagement with the community in this way will help reduce the regulatory burden on our regulated population.

### Updated website at [www.asic.gov.au](http://www.asic.gov.au)

- 77 Over 2014, we are undertaking a substantial IT project to update [www.asic.gov.au](http://www.asic.gov.au) to meet whole-of-Government accessibility obligations, and using this as an opportunity to also greatly improve the look, feel and usability of the website. This will mean easier and more efficient stakeholder use of the website and information on it. We expect this to reduce the time needed to access information and enable easier and more efficient compliance with regulatory obligations, thereby reducing overall costs for many of our regulated businesses.

## Appendix 1: Forms identified for removal, consolidation or simplification

Table 1: Forms for removal (subject to consultation)

Form no.	Form name	Basis for removal	Legislative reform required?
142	<i>Cover sheet for friendly society disclosure document</i>	Obsolete	No
313	<i>Notification of address in Australia of information relating to financial records kept outside Australia</i>	Information available from the company	Yes
909	<i>Notification of office at which register is kept</i>	Information available from the company	Yes
991	<i>Notification of location of books on computer</i>	Information available from the company	Yes
992	<i>Notification of change of location of books kept on computer</i>	Information available from the company	Yes
6074	<i>Notice regarding location of register of relevant interests</i>	Information not used by ASIC	Yes
207Z	<i>Certification of compliance with stamp duty law</i>	Information not used by ASIC	Yes
5130	<i>Notification of the office at which register of interests is kept</i>	Information not used by ASIC	Yes
FS89	<i>Notice of change to fees and charges in a PDS</i>	Information not used by ASIC	Yes
FS92	<i>Notification of intention to comply with Future of Financial Advice provisions</i>	Obsolete	Yes
907	<i>Presentation of triennial statement by an auditor</i>	Obsolete	No
314	<i>Notification of return of members of firms of auditors</i>	Information not used by ASIC	Yes
104	<i>Record of lodgement of documents</i>	Administrative only	No
110	<i>Record of lodgement of documents: Local ASIC representative</i>	Administrative only	No

Form no.	Form name	Basis for removal	Legislative reform required?
408	<i>Notification in relation to the register of a registered foreign company under section 601CM</i>	Information not used by ASIC	Yes
911	<i>Verification or certification of a document</i>	Information not used by ASIC	Yes
540	<i>Statement in writing of posting of notices of appointment to settle list or supplementary list of contributories</i>	Information not used by ASIC	Yes
545	<i>Statement in writing of giving notice to persons placed on the list or supplementary list of contributories</i>	Information not used by ASIC	Yes
555	<i>Notice of controller extending time to submit report as to affairs</i>	Information not used by ASIC	Yes
558	<i>Court order extending time to provide report as to affairs</i>	Information not used by ASIC	Yes
562	<i>Notice of liquidator extending time to submit report as to affairs</i>	Information not used by ASIC	Yes

**Table 2: Forms for consolidation or simplification (subject to consultation)**

Form no.	Form name	Basis for consolidation/simplification	Legislative reform required?
131	<i>Notice of meeting (demutualisation)</i>	Forms 131 and 132 can be consolidated	No
132	<i>Notice of meeting or consent process (demutualisation)</i>		
403	<i>Verification of copy of document authorising on behalf of a foreign company, execution of a document appointing a local agent</i>	Consolidate into Form 418	No

Form no.	Form name	Basis for consolidation/simplification	Legislative reform required?	
211	<i>Notification of division or conversion of classes of shares</i>	Consolidate into Form 484	No	
362	<i>Notification of appointment or cessation of a registered agent by a company</i>		Consolidate into Form 484 and company registration	No
486	<i>Notification to nominate, change or cease a contact address for a company</i>		Consolidate into Form 484 and company registration	No
489	<i>Notification of change of registered office or office hours of a registered body</i>		Consolidate into Form 484	No
490	<i>Notification of change to directors of a registered body</i>		Consolidate into Form 484	No
FS88	<i>PDS in-use notice</i>	Simplification	No	
FS90	<i>Notice that a product in a PDS has ceased to be available</i>	Simplification	No	
522	<i>Notification of meeting of creditors to consider appointing a new liquidator</i>	Consolidate into Form 505	No	
529	<i>Notice of meeting: Creditors to consider voluntary winding up</i>	Simplification	No	
905A	<i>Notification of ceasing to act as or change to details of a liquidator</i>	Simplification	No	
5138A	<i>Notification of commencement or completion of winding up of a registered scheme</i>	Combine into one deregistration form	No	
6010/A	<i>Application for a voluntary deregistration of a company/managed investment scheme</i>		Yes	
407	<i>Notification of cessation, winding up or dissolution of a foreign company or registered Australian body</i>		No	

## Appendix 2: Proposed minor or technical law reform

**Table 3: Proposed minor or technical law reform (subject to consultation)**

Proposal	Rationale/notes	Business/individuals affected
<p>Enable large partnerships to be registered as a managed investment scheme (s115: restrictions on size of partnerships and size of non-incorporated bodies).</p>	<p>We think that the managed investment scheme regulatory framework is sufficient to govern large managed investment scheme partnerships, and so the prohibition on a partnership or association with greater than 20 members that has an object of gain should not apply to registered schemes.</p>	<p>Future partners</p>
<p>Empower the operator of a timesharing scheme to execute any instrument of transfer or do any other act necessary for the transfer on behalf of a member in relation to the interest in the scheme property where necessary to deal with members who have forfeited their interest in a timesharing scheme.</p>	<p>This is largely intended to facilitate such transfers for existing schemes whose constitutions do not enable this.</p>	<p>Operators and members of a small number of old timesharing schemes</p>
<p>Reframe s601GB of the Corporations Act so that the obligation is not on the responsible entity to ensure the constitution is enforceable but, rather, the Act confers enforceability.</p>	<p>This would remove a compliance obligation from the responsible entity.</p>	<p>Responsible entities and future members of registered schemes</p>
<p>Modify the s428 and 429 requirements for responsible entities or custodial or depository service providers to use 'in receivership' in public documents and for officers to report when only the assets of a particular scheme or client are affected.</p> <p>In the case of reporting to the controller, the affairs that are the subject of the reporting obligation should be affairs that relate to the relevant scheme or assets held in providing a custodial or depository service.</p>	<p>Instead, the requirement could be to note that a receiver has been appointed to property of the relevant scheme or held under the relevant service, but only in any public document of the responsible entity or corporation relating to that scheme.</p>	<p>Responsible entities, and trustees and controllers</p>

Proposal	Rationale/notes	Business/individuals affected
Enable a responsible entity to be appointed by ordinary resolution at a meeting called by a temporary responsible entity under s601FQ.	When a temporary responsible entity is appointed, and the alternative is winding up, a majority voting for the temporary responsible entity should be able to avoid winding up, even in the face of non-voting by others.	Temporary responsible entities and members of registered schemes
Repeal the requirement for a constitution to provide a method for dealing with complaints.	This largely duplicates the s912B requirement for AFS licensees to have adequate dispute resolution.	Responsible entities
Enable alternate persons (not just registered company auditors) to audit a managed investment scheme's compliance plan.	<p>Under s601HG, the responsible entity of a registered scheme must have an auditor in place at all times to audit compliance with the scheme's compliance plan. It is not always the case that a registered auditor is best placed to undertake such an audit. Therefore, we suggest consideration be given to expanding the range of qualified persons for the purpose of this audit.</p> <p>In addition, a materiality limit could be explicit in the opinion required—that is, the opinion about the adequacy of the compliance plan is that, at all times during the financial year, the compliance plan then in force met the requirements of the Corporations Act in all material respects. Material should be defined by reference to whether there is an unreasonable risk of non-compliance materially adversely affecting the interests of a member or members remaining if the compliance plan were complied with.</p> <p>These proposals would increase competition in providing compliance auditing services and make the requirement more practical.</p>	Responsible entities and members of registered schemes, compliance plan auditors
Repeal reg 1.2A.01(b) of the Corporations Regulations.	The company 'Australian Bloodstock Exchange Limited' no longer exists.	
Repeal reg 7.1.06B of the Corporations Regulations.	This duplicates reg. 7.1.05.	
Repeal reg 7.9.75(1A) of the Corporations Regulations.	This was a transitional provision and is spent.	
Repeal reg 7.9.64(l)(i) of the Corporations Regulations.	This provision is spent.	

## Key terms

Term	Meaning in this document
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 of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act.
AIF	Alternative investment fund
AIFMD	Alternative Investment Fund Managers Directive
APRA	Australian Prudential Regulation Authority
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CAMAC	Corporations and Markets Advisory Committee
CFTC	Commodity Futures and Trading Commission (US)
Ch 2M	A chapter of the Corporations Act (in this example numbered 2M), unless otherwise specified
[CO 98/1418] (for example)	An ASIC class order (in this example numbered 98/1418)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CPSS	Committee on Payment and Settlement Systems of the Bank of International Settlement
CPSS–IOSCO Principles	CPSS–IOSCO, <i>Principles for financial market infrastructures</i> , as revised from time to time, available at <a href="http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf">www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf</a>
ESMA	European Securities and Markets Authority
EU	European Union
G20	Group of finance ministers and central bank governors from 19 of the world's largest economies, and the European Union
IOSCO	International Organization of Securities Commissions
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets



Term	Meaning in this document
OTC	Over the counter
Product Disclosure Statement (PDS)	<p>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
reg 7.6.04 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.04)
RSE	Registrable superannuation entity
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	<p>The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Schs 10B, 10C, 10D and 10E of the Corporations Regulations, which prescribe the content and length of the PDS for first home saver accounts, margin loans, superannuation products and simple managed investment schemes</p>