



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 229

Repealing redundant ASIC class orders

April 2015

About this paper

This consultation paper sets out ASIC's proposals to repeal class orders that we consider are no longer required and do not form a necessary and useful part of the legislative framework. Under the *Legislative Instruments Act 2003*, these class orders will expire ('sunset') if not remade.

We are seeking feedback on our proposals to repeal these class orders.

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 17 April 2015 and is based on the Corporations Act 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

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

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

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 17 June 2015 to:

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What will happen next?

Stage 1	17 April 2015	ASIC consultation paper released
Stage 2	17 June 2015	Comments due on the consultation paper
Stage 3	Ongoing thereafter	Repeal of instruments

A Background

Key points

Legislative instruments, such as class orders, are repealed automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. We will consult on all sunseting legislative instruments that have a regulatory impact.

Purpose of 'sunsetting' legislative instruments

- 1 Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the 10th anniversary of its registration on the Federal Register of Legislative Instruments (FRLI). Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.
- 3 Where an instrument is deemed to no longer serve a regulatory purpose we will consult on repealing it. We will repeal instruments rather than allow them to sunset so that industry is certain of our intentions and confident that, where instruments are removed, this was our intention.

Instruments to be repealed

- 4 This consultation paper seeks feedback on ASIC's proposals to repeal instruments that in our view no longer serve a regulatory purpose: see Table 1. In doing this we hope to ensure that only instruments that serve a regulatory purpose are maintained.
- 5 We have a deregulatory focus. We are aware of the burden unnecessary red tape can impose on business and the potential impact of this on productivity. To address this, we continue to pursue initiatives to reduce red tape for individuals and businesses. We welcome feedback where repealing an instrument would impose a regulatory burden on business.

Table 1: Class orders we propose to repeal

Class order	Discussed at
Class Order [CO 91/27] <i>Standard time</i>	Table 2
Class Order [CO 98/57] <i>Exemption from calling meeting of unitholders under s1457</i>	Paragraph 56
Class Order [CO 98/59] <i>Transitional relief for one party prescribed interest schemes</i>	Paragraph 59
Class Order [CO 98/65] <i>Horse racing schemes</i>	Paragraph 39
Class Order [CO 98/105] <i>Authorised trustee corporations—trust liabilities</i>	Paragraph 42
Class Order [CO 98/107] <i>NSW workers compensation statutory funds</i>	Paragraph 44
Class Order [CO 98/110] <i>ADIs—related party balances and transactions</i>	Paragraph 40
Class Order [CO 98/112] <i>Non-life companies which control life companies</i>	Paragraph 45
Class Order [CO 98/1416] <i>Comparable information in financial reports</i>	Paragraph 47
Class Order [CO 98/1805] <i>Former representative on compliance committee</i>	Paragraph 12
Class Order [CO 98/1807] <i>Exemption from Div 5 excluded issue scheme</i>	Paragraph 57
Class Order [CO 98/2159] <i>Removing approved deed provisions</i>	Paragraph 13
Class Order [CO 99/374] <i>Nomination of a related body corporate as the proposed responsible entity</i>	Paragraph 14
Class Order [CO 00/4] <i>Transitional relief for member discretionary master funds</i>	Paragraph 16
Class Order [CO 00/5] <i>Investor directed portfolio service—deregistration of registered managed investment scheme</i>	Paragraph 49
Class Order [CO 00/166] <i>Profile statements</i>	Paragraph 18
Class Order [CO 00/200] <i>Relief for operations of foreign managed investment schemes</i>	Paragraph 20
Class Order [CO 00/202] <i>Two part prospectus relief for mortgage schemes</i>	Paragraph 22
Class Order [CO 00/227] <i>Time-sharing schemes: private arrangements</i>	Paragraph 23
Class Order [CO 00/228] <i>Time-sharing schemes: securities hawking relief</i>	Paragraph 26
Class Order [CO 00/237] <i>Twenty issues in 20 months exemption—transitional aspects</i>	Table 3
Class Order [CO 00/240] <i>Treatment of offers of interests in managed investment schemes</i>	Table 2
Class Order [CO 00/1067] <i>Trustee common funds</i>	Paragraph 60
Class Order [CO 00/1068] <i>Warrants: fundraising relief</i>	Table 2

Class order	Discussed at
Class Order [CO 00/1087] <i>Modification of managed investment scheme transitional provisions regarding certain trustee company common funds operating in WA, SA and NT prior to the Commonwealth regulation of trustee companies</i>	Table 3
Class Order [CO 00/1115] <i>Time sharing: temporary relief for fixed term schemes</i>	Table 3
Class Order [CO 01/55] <i>Friendly societies—subsequent contributions</i>	Table 2
Class Order [CO 02/171] <i>Private ostrich schemes</i>	Paragraph 28
Class Order [CO 02/186] <i>SFE Corporation Limited—managed discretionary accounts</i>	Paragraph 63
Class Order [CO 02/191] <i>Product disclosure—requirements for issuers of financial products who lodge opt-in notices</i>	Table 3
Class Order [CO 02/239] <i>Participating property syndicates</i>	Paragraph 30
Class Order [CO 02/803] <i>Overseas futures brokers and securities dealers: exemption from requirement to hold an AFS licence</i>	Table 3
Class Order [CO 02/930] <i>Interim licensing relief for operators of pooled development funds</i>	Table 3
Class Order [CO 02/1022] <i>Sydney Futures Exchange Limited—operation of managed discretionary accounts by associate participants</i>	Paragraph 64
Class Order [CO 02/1145] <i>Declaration regarding overseas student health insurance</i>	Table 2
Class Order [CO 03/485] <i>Periodic statements under s1017D</i>	Table 3
Class Order [CO 03/825] <i>Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction</i>	Paragraph 51
Class Order [CO 03/1096] <i>Actuaries</i>	Table 3
Class Order [CO 03/1097] <i>Deferral of s1012IA</i>	Table 3
Class Order [CO 04/150] <i>Wholly-owned subsidiaries of professional investors to be treated as wholesale clients</i>	Table 3
Class Order [CO 04/967] <i>Registered schemes—disclosure of remuneration</i>	Table 3
Class Order [CO 04/1434] <i>Dollar disclosure: Transitional relief</i>	Table 3
Class Order [CO 04/1575] <i>Managed investment schemes: unit pricing</i>	Table 3
Class Order [CO 05/566] <i>Managed investment schemes: perpetuity clauses in scheme constitutions</i>	Paragraph 32
Class Order [CO 05/637] <i>Additional month for first financial reports under AIFRS</i>	Table 3
Class Order [CO 05/683] <i>Dollar disclosure: further transitional relief</i>	Table 3
Class Order [CO 05/1254] <i>Transitional relief for certain superannuation periodic statements</i>	Table 3

Class order	Discussed at
Class Order [CO 05/1270] <i>Operation of certain instruments</i>	Paragraph 34
Class Order [CO 06/50] <i>Transfer of remuneration information into directors' report</i>	Table 3
Class Order [CO 06/105] <i>Calculation of director and executive remuneration</i>	Table 3
Class Order [CO 06/538] <i>Relief from enhanced disclosures in exit statements</i>	Table 3
Class Order [CO 06/602] <i>Transitional periodic statement relief for legacy superannuation products</i>	Table 3
Class Order [CO 07/409] <i>General insurance disclosure: extension of transitional period</i>	Table 3
Class Order [CO 07/447] <i>Temporary extension of time for SOA delivery</i>	Table 3
Class Order [CO 10/746] <i>Australian credit licences: Streamlined applicants formerly regulated by State or Territory credit laws</i>	Table 3
Class Order [CO 10/907] <i>Exempted special purpose funding entities—deferral of start date for EDR scheme membership</i>	Table 3
Class Order [CO 11/261] <i>Trustee companies providing traditional trustee company services—deferral of start date for dispute resolution requirements</i>	Table 3
Class Order [CO 11/407] <i>Trustee companies—deemed licensees—extension of transitional arrangements</i>	Table 3
Class Order [CO 11/760] <i>Restoration of extension of transitional period for credit disclosure obligations</i>	Table 3

- 6 Copies of these class orders can be found at www.comlaw.gov.au. We have also included direct links to the class orders in the proposals. Some class orders made before 2005 may not be available on www.comlaw.gov.au; where this is the case we have provided a link to download a PDF version.
- 7 We intend to repeal the class orders as soon as possible following the consultation process, using a single repealing instrument. For instruments where this approach is not possible we will use separate repealing instruments.

B Repeal of ASIC class orders that are not relied on

Key points

We are proposing to repeal class orders that are not relied on.

We have formed the preliminary view that these class orders are no longer required and do not form a necessary and useful part of the regulatory framework.

The class orders

- 8 The class orders in this section are instruments that we consider no longer form a necessary and useful part of the legislative framework. We are consulting to confirm that this is the case. If the feedback we receive from consultation confirms that these class orders are no longer necessary or useful, we will repeal them.
- 9 We made these class orders to address regulatory inconsistencies, unnecessary impositions on business and a lack of clarity that existed in the market at that time. However, due to changes in either the legislative framework or market conditions they are, in our view, no longer required. The relief provided by a number of these class orders was transitional in nature and was only intended to apply for a limited time period, which has now passed.
- 10 In some instances, we consider that any residual need for the relief provided by the class orders is more appropriately given on a case-specific basis by application rather than by class order relief.

Your feedback

- 11 You are invited to comment on any of our proposals to repeal the ASIC class orders in this section, including whether the class orders are currently being relied on and are operating effectively and efficiently. These proposals are only an indication of the approach we may take and are not our final policy.

Class orders relating to prescribed interest schemes

Background

- 12 [CO 98/1805] made a technical modification to the old Corporations Law provisions for a person involved in a prescribed interest scheme that transitioned to a registered scheme under Ch 5C of the *Corporations Act 2001* (Corporations Act). The modification was to transitional provisions in s1464 of the old Corporations Law, which were designed to clarify how the concepts of an ‘external director’ and an ‘external member’ in s601JA and 601JB of the Corporations Act would apply where a prescribed interest scheme transitioned to a registered scheme under Ch 5C. The concepts of an ‘external director’ and an ‘external member’ are central to the compliance committee requirements that may apply to the responsible entity of a registered scheme.
- 13 [CO 98/2159] modified transitional provisions in the old Corporations Law to assist prescribed interest schemes to transition to the registered scheme framework under Ch 5C. The modifications made by the class order allowed a proposed responsible entity to modify the scheme’s approved deed (the forerunner to the constitution of a registered scheme) to remove certain types of provisions and any incidental changes. [CO 98/2159] also allowed modifications to the approved deed where the proposed responsible entity reasonably believed the changes were in the best interests of holders of the prescribed interests, were fair to all holders and would not adversely affect holders’ rights.
- 14 [CO 99/374] modified transitional provisions of the old Corporations Law regarding the proposed nomination of a related body corporate to become the responsible entity of a registered scheme. [CO 99/374] allowed the management company or the trustee or representative of a prescribed interest scheme to nominate a related body corporate as the proposed responsible entity. The nominee became the proposed responsible entity if chosen by members, or if the members did not ask for a vote after they received notice of the nomination.

Proposal

- B1** We propose to repeal [CO 98/1805], [CO 98/2159] and [CO 99/374], which would otherwise sunset on 1 October 2017, 1 April 2017 and 1 October 2016, respectively. You can access the current instruments by clicking on the following direct links: [\[CO 98/1805\]](#), [\[CO 98/2159\]](#) and [\[CO 99/374\]](#).

Rationale

- 15 [CO 98/1805], [CO 98/2159] and [CO 99/374] should be repealed as there are very few prescribed interest schemes left. Those remaining are unlikely to transition to the Ch 5C regime, which governs managed investment schemes. Any transitions could be dealt with appropriately by case-specific relief.

Class Order [CO 00/4] *Transitional relief for member discretionary master funds*

Background

- 16 [CO 00/4] modified provisions of the old Corporations Law to enable members' discretionary master funds to transition to investor directed portfolio services.

Proposal

- B2 We propose to repeal [CO 00/4], which would otherwise sunset on 1 April 2017. You can access the current instrument by clicking on the following direct link: [\[CO 00/4\]](#).

Rationale

- 17 This instrument no longer serves a regulatory purpose. The class order should be repealed as the transition process should have been completed by now. Any transitions could be dealt with appropriately by case-specific relief.

Class Order [CO 00/166] *Profile statements*

Background

- 18 [CO 00/166] approved, under the old Corporations Law, the use of profile statements for various types of financial products.

Proposal

- B3 We propose to repeal [CO 00/166], which would otherwise sunset on 1 April 2017. You can access the current instrument by clicking on the following direct link: [\[CO 00/166\]](#).

Rationale

- 19 [CO 00/166] should be repealed. It is unlikely that companies would be using profile statements 14 years after the class order was made and, if an entity wanted to use a profile statement, we should consider whether this should be approved under s709, using case-specific relief.

Class Order [CO 00/200] *Relief for operations of foreign managed investment schemes*

Background

- 20 [CO 00/200] provides relief from the requirement to register a managed investment scheme under Ch 5C for particular offers or issues of interests in a foreign managed investment scheme.

Proposal

- B4** We propose to repeal [CO 00/200], which would otherwise sunset on 1 October 2016. You can access the current instrument by clicking on the following direct link: [\[CO 00/200\]](#).

Rationale

- 21 [CO 00/200] should be repealed as there is little scope for the operation of this instrument in light of other statutory provisions. Regulation 10.2.124 of the Corporations Regulations 2001 (Corporations Regulations) extends the exception from the registration requirement under s601ED(2) to issues of interests that were made before the product disclosure provisions in Div 2 of Pt 7.9 of the Corporations Act took effect on 12 March 2000. This extension of the exception from registration applies if, had the interests been issued before 12 March 2000, the issue would not have required a disclosure document to investors under the old Corporations Law. This extension of the registration exception would almost certainly cover situations that would fall within the relief under [CO 00/200].

Class orders relating to the prospectus provisions of the old Corporations Law

Background

- 22 [CO 00/202] provided relief from the prospectus provisions in Ch 6D of the old Corporations Law, to allow the operator of a mortgage scheme to give a

general scheme-wide prospectus and a specific prospectus for the particular mortgage.

- 23 [CO 00/227] provided relief from the prospectus provisions for small, private time-share arrangements under the old Corporations Law.

Proposal

B5 We propose to repeal [CO 00/202] and [CO 00/227], which would otherwise sunset on 1 April 2017. You can access the current instruments by clicking on the following direct links to download a PDF of [\[CO 00/202\]](#) and view [\[CO 00/227\]](#) online.

Rationale

- 24 [CO 00/202] should be repealed as s1013L allows a Product Disclosure Statement (PDS) to consist of two or more separate documents.
- 25 [CO 00/227] should be repealed as it is unlikely to be relied on. In most cases the arrangements will be covered by statutory exceptions from the requirement to give a PDS or prospectus. In the event that relief is required, it would be appropriate to consider case-specific relief.

Class Order [CO 00/228] *Time-sharing schemes: securities hawking relief*

Background

- 26 [CO 00/228] provided relief from the securities hawking provisions under the old Corporations Law for existing holders of interests in a time-sharing scheme looking to sell.

Proposal

B6 We propose to repeal [CO 00/228], which would otherwise sunset on 1 April 2017. You can access the current instrument by clicking on the following direct link: [\[CO 00/228\]](#).

Rationale

- 27 [CO 00/228] only applies to time-sharing schemes that involved the issuing of securities, under the old Corporations Law. There is no corresponding relief for the majority of time-sharing schemes where the interests are not issued as securities. In the event that relief is required, it would be appropriate to consider case-specific relief.

Class Order [CO 02/171] *Private ostrich schemes*

Background

- 28 [CO 02/171] provides relief in relation to private ostrich schemes from the registered managed investment scheme provisions of the Corporations Act, relief from the requirement to hold an Australian financial services (AFS) licence and relief from most of the financial services disclosure requirements under the Act. The relief applies to an offer of an interest in an ostrich scheme to a wholesale client or an offer that does not require a PDS to be given under the Corporations Act. Further, the relief applies to an interest in an ostrich scheme issued as a result of the acceptance of a small-scale, personal offer of interests in an ostrich scheme. The rationale for the relief is that, for private ostrich schemes, the costs of fully complying with the Corporations Act are likely to be disproportionately burdensome compared to the regulatory benefits that would flow from compliance.

Proposal

- B7 We propose to repeal [CO 02/171], which would otherwise sunset on 1 October 2017. You can access the current instrument by clicking on the following direct link: [\[CO 02/171\]](#).

Rationale

- 29 There is no apparent ongoing need for the relief. To the best of our knowledge, the private ostrich scheme industry in Australia has a very low level of activity. There is anecdotal evidence that in recent years various private ostrich schemes stopped operating. In the event that relief is required, it would be appropriate to consider case-specific relief.

Class Order [CO 02/239] *Participating property syndicates*

Background

- 30 [CO 02/239] provides Ch 5C relief and licensing relief subject to conditions in relation to participating property syndicates. Both types of relief are available to a promoter of a syndicate. The licensing relief is also available to ‘each other person’ who provides financial services in relation to interests in the syndicate. The syndicates to which the class order applies are managed investment schemes under which each interest in the scheme arises out of:
- (a) an agreement between the investors who are to purchase title to property or who hold title to property legally and beneficially; and

- (b) any agreement between the investors and a person who will provide property management services, including arranging leases, collecting rent and arranging repair and maintenance work.

Proposal

B8 We propose to repeal [CO 02/239], which would otherwise sunset on 1 April 2016. You can access the current instrument by clicking on the following direct link to download a PDF: [\[CO 02/239\]](#).

Rationale

- 31 [CO 02/239] should sunset because there is no ongoing need for the relief. Two industry associations, which are representative of the property syndicate sector in Australia, have advised that their members do not rely on [CO 02/239].

Class Order [CO 05/566] *Managed investment schemes: perpetuity clauses in scheme constitutions*

Background

- 32 [CO 05/566] allows a responsible entity of a registered scheme to, in certain circumstances, remove a perpetuity clause from the scheme's constitution without obtaining member approval. The class order was intended to facilitate schemes to comply with the Australian equivalents to International Financial Reporting Standards (AIFRS) for the accounting classification of unitholder capital.

Proposal

B9 We propose to repeal [CO 05/566], which would otherwise sunset on 1 April 2016. You can access the current instrument by clicking on the following direct link: [\[CO 05/566\]](#).

Rationale

- 33 [CO 05/566] should be repealed as responsible entities have had nine years to address the technical issue that the class order was intended to overcome. In the event that relief is required, it would be appropriate to consider case-specific relief.

Class Order [CO 05/1270] *Operation of certain instruments*

Background

- 34 In December 2005 we made [CO 05/1270] to remove doubt about the efficacy of various instruments that, because they were not gazetted before 1 January 2005, were arguably rendered inoperative from 1 January 2005 by the Legislative Instruments Act. [CO 05/1270] was later amended to preserve the effect of certain additional instruments that were subsequently rendered inoperative by the Legislative Instruments Act.

Proposal

- B10** We propose to repeal [CO 05/1270] after the underlying instruments to which it relates are remade or repealed. [CO 05/1270] is scheduled to sunset on 1 April 2016. You can access the current instrument by clicking on the following direct link: [\[CO 05/1270\]](#).

Rationale

- 35 We will be consulting on the underlying instruments before remaking or repealing them. As each instrument is remade or repealed we will amend [CO 05/1270] to remove the reference to that instrument. When all underlying instruments have been remade or repealed, we will repeal [CO 05/1270].

C Repeal of superseded ASIC class orders

Key points

We are proposing to repeal superseded class orders.

We have formed the preliminary view that these class orders are no longer required and do not form a necessary and useful part of the legislative framework.

The class orders

- 36 The class orders in this section have, in our view, either been superseded or rendered irrelevant by legislative amendments or subsequent class orders.

Your feedback

- 37 You are invited to comment on any of our proposals to repeal the ASIC class orders in this section, including whether the class orders are currently operating effectively and efficiently. These proposals are only an indication of the approach we may take and are not our final policy.

Class orders providing relief from provisions that have been repealed or replaced

Proposal

- c1 We propose to repeal the class orders in Table 2, which would otherwise sunset. You can access the current instruments by clicking on the direct links in Table 2.

Table 2: Class orders providing relief from provisions that have been removed

Class order	Background	Sunsetting date
[CO 91/27]	[CO 91/27] declared that 'standard time' for the purposes of s265 would be New South Wales standard time. Section 265 has since been removed from the Corporations Act.	1 October 2017
[CO 00/240]	[CO 00/240] made technical modifications to some prospectus provisions in the old Corporations Law. The prospectus provisions in the old Corporations Law have since been replaced by the prospectus provisions in Ch 6D of the Corporations Act.	1 April 2017

Class order	Background	Sunsetting date
[CO 00/1068]	<p>[CO 00/1068] provides relief from Ch 6D to certain issuers and sellers of warrants over quoted securities. Relief was granted on the basis that the warrant is over quoted securities and otherwise complies with certain ASX Business Rules (now replaced by ASX Operating Rules).</p> <p>Warrants are now governed by Ch 7 and are no longer subject to Ch 6D (see regs 1.0.02, 6D.5.01 and 7.9.07A). [CO 00/1068] also refers to a number of ASX Business Rules that are no longer current.</p>	1 April 2017
[CO 01/55]	<p>[CO 01/55] conditionally exempted classes of persons from compliance with sections 135 and 136 of the Friendly Societies Code in respect of the acceptance of a contribution made by a member in certain circumstances.</p> <p>Regulation 12.7.06 effectively repealed the provisions covered by [CO 01/55].</p>	1 April 2017
[CO 02/1145]	<p>[CO 02/1145] declared that overseas student health insurance contracts issued before 31 March 2003 are not financial products.</p> <p>Overseas student health insurance contracts are now regulated under the <i>Private Health Insurance Act 2007</i> and the Private Health Insurance (Health Insurance Business) Rules 2013 as a health-related business. This means that such contracts are not financial products under s765A(1)(ca). Further to this, reg 7.1.07C states that overseas student health insurance contracts are not a financial product.</p>	1 April 2017

Rationale

- 38 The provisions that the class orders in Table 2 provided relief from have been repealed or replaced. These class orders no longer serve a purpose.

Class orders that have been superseded by other class orders

Background

- 39 [CO 98/65] provided relief from the managed investment scheme provisions and the disclosure provisions in the old Corporations Law for horse-racing schemes.
- 40 [CO 98/110] relieved authorised deposit-taking institutions from certain requirements contained in the accounting standards, where specified conditions were met.

Proposal

- c2 We propose to repeal [CO 98/65] and [CO 98/110], which would otherwise sunset on 1 October 2017 and 1 October 2016, respectively. You can access the current instruments by clicking on the following direct links: [\[CO 98/65\]](#) and [\[CO 98/110\]](#).

Rationale

- 41 The relevant relief provided by:
- (a) [CO 98/65] is now provided by Class Order [CO 02/319] *Horse racing syndicates*; and
 - (b) [CO 98/110] was contained in Superseded Class Order [SCO 05/640] *ADIs—related party transactions and balances*, which was subsequently repealed.

These instruments no longer serve a purpose.

Class Order [CO 98/105] *Authorised trustee corporations—trust liabilities*

Background

- 42 [CO 98/105] relieves authorised trustee corporations and their wholly owned subsidiaries from certain requirements in the accounting standards that may have necessitated disclosure of trust liabilities and the right of indemnity from trust assets in their financial reports.

Proposal

- c3 We propose to repeal [CO 98/105], which would otherwise sunset on 1 October 2016. You can access the current instrument by clicking on the following direct link: [\[CO 98/105\]](#).

Rationale

- 43 We decided to not grant relief similar to that provided by [CO 98/105] under AIFRS. Because of this, the relief has served no purpose for financial years commencing on or after 1 January 2005.

Class orders that applied to a particular time period

Background

- 44 The *Workers Compensation Act 1987* (NSW) licenses companies and disclosing entities to provide workers compensation liability insurance. [CO 98/107] provides relief to those companies and disclosing entities, or the parent entity of such a company or disclosing entity, from the reporting requirements contained in the Corporations Act for half-years and years commencing on or before 31 December 2004.

- 45 [CO 98/112] provided relief to non-life insurance companies who control life insurance companies from certain financial reporting requirements, where specific conditions are met.

Proposal

- c4 We propose to repeal [CO 98/107] and [CO 98/112], which would otherwise sunset on 1 October 2016. You can access the current instruments by clicking on the following direct links: [\[CO 98/107\]](#) and [\[CO 98/112\]](#).

Rationale

- 46 [CO 98/107] only applied to financial years commencing on or before 31 December 2004 and [CO 98/112] to financial years commencing on or before 31 December 1999. These instruments no longer serve a purpose.

Class Order [CO 98/1416] *Comparable information in financial reports*

Background

- 47 [CO 98/1416] addressed unintended consequences of some accounting standards that required comparative information where an entity did not report in the immediately preceding half-year or year but did report in some earlier period.

Proposal

- c5 We propose to repeal [CO 98/1416], which would otherwise sunset on 1 October 2016. You can access the current instrument by clicking on the following direct link: [\[CO 98/1416\]](#).

Rationale

- 48 [CO 98/1416] ceased to apply for financial years commencing on or after 1 January 2005. Unlike the previous standards, AIFRS required entities that did not report in the immediately prior period to provide comparative information.

Class Order [CO 00/5] *Investor directed portfolio services—deregistration of registered managed investment schemes*

Background

- 49 [CO 00/5] modified the voluntary deregistration provision, s601PA, in the old Corporations Law to enable the deregistration of a managed investment scheme that is an investor directed portfolio service. [CO 00/5] is based on Superseded Class Order [SCO 00/01] *Investor directed portfolio services*.

Proposal

- c6 We propose to repeal [CO 00/5], which would otherwise sunset on 1 April 2017. You can access the current instrument by clicking on the following direct link: [\[CO 00/5\]](#).

Rationale

- 50 [CO 00/5] should be repealed as it is based on a superseded class order, [SCO 00/01]. This instrument no longer serves a purpose.

Class Order [CO 03/825] *Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction*

Background

- 51 [CO 03/825] exempts a person from the need to hold an AFS licence where the person provides further services to an existing client (i.e. a client holding a product previously issued by the person) and the client acquired the product, which was a foreign financial product, when they were not in this jurisdiction.

Proposal

- c7 We propose to repeal [CO 03/825], which would otherwise sunset on 1 April 2017. You can access the current instrument by clicking on the following direct link: [\[CO 03/825\]](#).

Rationale

- 52 Broader relief than that provided by [CO 03/825] is now available under the Corporations Regulations. Regulation 7.6.02AG(2D) provides that:
- a person (*person 1*) is exempt from the requirement to hold an Australian financial services licence for a financial service they provide to a person (*person 2*) in the following circumstances:
- (a) person 1 is not in this jurisdiction;

- (b) person 2 is in this jurisdiction;
- (c) the service relates to a financial product:

...

- (ii) issued by person 1 and acquired by person 2 when person 2 was not in this jurisdiction;

53 The exemption in reg 7.6.02AG(2D) is broader than the relief provided by [CO 03/825] because it extends to all financial products, whereas [CO 03/825] only applies to foreign financial products. We consider that [CO 03/825] is no longer necessary and should be repealed.

D Repeal of transitional ASIC class orders

Key points

We are proposing to repeal transitional class orders.

We have formed the preliminary view that these class orders are no longer required and do not form a necessary and useful part of the legislative framework.

The class orders

- 54 We will give transitional relief in certain instances where we are satisfied that industry requires time to comply with obligations imposed by legislation. Such relief may also be given to fix technical errors in new legislation.

Your feedback

- 55 You are invited to comment on any of our proposals to repeal the ASIC class orders in this section, including whether the class orders are currently operating effectively and efficiently. These proposals are only an indication of the approach we may take and are not our final policy.

Class orders relating to managed investment schemes not required to be registered under s601ED

Background

- 56 [CO 98/57] provided relief to management companies from the requirement to call a meeting under s1457 of the old Corporations Law (as continued in force by s1408 of the Corporations Act) in certain circumstances where the relevant managed investment scheme was not required to be registered under s601ED of the old Corporations Law.
- 57 [CO 98/1807] provided relief from the continuing application of the old Corporations Law before 1 July 1998 (as continued in force by s1408 of the Corporations Act) for certain managed investment schemes where all issues have been excluded issues and all members have agreed that the scheme is not required to be registered under s601ED of the old Corporations Law or to continue to be subject to the law in force immediately before the commencement of Ch 5C of the Corporations Act.

Proposal

D1 We propose to repeal [CO 98/57] and [CO 98/1807], which would otherwise sunset on 1 April 2018 and 1 October 2017, respectively. You can access the current instruments by clicking on the following direct link: [\[CO 98/57\]](#) and [\[CO 98/1807\]](#).

Rationale

58 [CO 98/57] was originally made under s601QA(1)(a) of the old Corporations Law and [CO 98/1807] under s601QA(1)(b). Both are continued in force under s1399 of the Corporations Act. In our view, the relief in [CO 98/57] and [CO 98/1807] is no longer required given the provisions that the class orders provided relief from are transitional in nature.

Class orders relating to prescribed interest schemes

Background

59 [CO 98/59] modified transitional provisions of the old Corporations Law to enable a one party prescribed interest scheme to convene a meeting of members to apply to ASIC to have the scheme registered under Ch 5C or to wind up the scheme.

60 [CO 00/1067] modified some of the transitional provisions relating to prescribed interest schemes, changing various technical requirements relating to meetings of common funds.

Proposal

D2 We propose to repeal [CO 98/59] and [CO 00/1067], which would otherwise sunset on 1 October 2016. You can access the current instruments by clicking on the following direct links: [\[CO 98/59\]](#) and [\[CO 00/1067\]](#).

Rationale

61 [CO 98/59] and [CO 00/1067] should be repealed as there are very few prescribed interest schemes left. Those remaining would be unlikely to transition to the Ch 5C regime, which governs managed investment schemes. Any transitions could be dealt with appropriately by case-specific relief.

Class orders relating to expired transitional arrangements

Proposal

- D3 We propose to repeal the class orders set out in Table 3, which would otherwise sunset. You can access the current instruments by clicking on the direct links in Table 3.

Table 3: Class orders relating to transitional arrangements

Class order	Background	Sunsetting date
[CO 00/237]	<p>[CO 00/237] clarifies whether and to what extent issues and sales of securities resulting from offers made before the commencement of Ch 6D or under disclosure documents regulated by former Div 2 of Pt 7.12 are to be counted for the purposes of the small scale offerings (20 issues in 12 months) exemption in s708(1).</p> <p>The class order should be repealed as the relief provided was transitional and is no longer relevant, as it relates to issues and sales of securities resulting from offers made before the commencement of Ch 6D or under disclosure documents regulated by the former Div 2 of Pt 7.12.</p>	1 April 2017
[CO 00/1087]	<p>[CO 00/1087] related to certain trustee company common funds that operated in Western Australia, South Australia and the Northern Territory. It amended Div 11 of the old Corporations Law, which concerned transitional provisions on the introduction of Ch 5C of the Corporations Act.</p> <p>The Corporations Act has been passed and Ch 5D introduced, and subsequently the state and territory legislation that related to the operation of trustee company common funds has been repealed.</p>	1 October 2016
[CO 00/1115]	<p>[CO 00/1115] provided temporary relief from the requirement to register a time-sharing scheme. The relief operated from 1 July 2000 to 31 March 2001, unless the scheme was registered before that date.</p>	1 April 2017
[CO 02/191]	<p>[CO 02/191] detailed the reasonable steps that a product issuer should go through after lodging a notice to 'opt in' to the FSR Act regime in relation to a financial product or class of financial products.</p>	1 April 2017
[CO 02/803]	<p>[CO 02/803] exempted certain overseas persons from the requirement to hold an AFS licence. The relief given by [CO 02/803] expired in 2004.</p>	1 April 2018
[CO 02/930]	<p>[CO 02/930] gave interim relief to operators of pooled development funds from the AFS licensing requirements in the Corporations Act. This operated from August 2002 to August 2003.</p>	1 April 2018
[CO 03/485]	<p>[CO 03/485] provided interim relief from the requirements in reg 7.9.75(2)(b) in relation to reporting common fund deductions in periodic statements. The relief had effect for each periodic statement required by s1017D for a reporting period ending on or before 30 June 2003, or in some cases 31 December 2003.</p>	1 April 2017

Class order	Background	Sunsetting date
[CO 03/1096]	[CO 03/1096] provided licensing relief in relation to advice provided by actuaries in particular circumstances prior to 31 August 2007.	1 October 2016
[CO 03/1097]	[CO 03/1097] deferred the operation of s1012IA until 1 July 2008.	1 October 2016
[CO 04/150]	[CO 04/150] expanded the category of wholesale clients to include wholly-owned subsidiaries of professional investors. It was issued on an interim basis until 31 December 2005. Regulation 7.6.02AE now provides the relief that was previously given by [CO 04/150].	1 April 2017
[CO 04/967]	[CO 04/967] applied to financial reports of registered schemes that are disclosing entities for financial years and half-years ending 30 June 2004 to 29 September 2004. It provided relief from any requirement to disclose remuneration paid directly or indirectly to the directors and executives of the scheme's responsible entity.	1 October 2017
[CO 04/1434]	[CO 04/1434] provided transitional relief for dollar disclosure requirements in periodic statements for periodic statements prepared before 1 July 2005.	1 April 2017
[CO 04/1575] (PDF)	[CO 04/1575] allows a responsible entity to make changes to the constitution of a managed investment scheme without passing a special resolution of members so that specific references in the constitution to accounting standards are to accounting standards in force immediately prior to 1 January 2005 and are not affected by the transition to AIFRS.	1 October 2017
[CO 05/637]	[CO 05/637] provided various types of entities with an additional month to comply with annual and half-yearly financial reporting obligations under Ch 2M for financial years and half-years that began in the 2005 calendar year. This was to provide entities with additional time for compliance with the adoption of AIFRS.	1 October 2015
[CO 05/683]	[CO 05/683] relieved an issuer of a deposit product, a non-cash payment facility which is related to that deposit product, or a general insurance product from the obligation to disclose amounts described in s1013D(1)(b), (d) and (e) in dollars in a PDS on a transitional basis. [CO 05/683] initially provided transitional relief until 1 July 2006. It was subsequently amended to provide relief in relation to general insurance products until 30 June 2008.	1 October 2015
[CO 05/1254]	[CO 05/1254] provided relief for those superannuation fund trustees with non-standard reporting periods that 'straddle' 1 July 2005 from the requirement to provide a periodic statement that contains transaction details and common fund disclosure. It only applied in relation to a first reporting period in respect of a new member joining the fund or sub-plan on or after 1 July 2005 and during that non-standard reporting period.	1 April 2016
[CO 06/50]	[CO 06/50] provided certain financial reporting relief to listed companies for a financial year ending between 31 December 2005 and 31 March 2006. The relief applied to financial reports under Ch 2M and applied for financial years ending 31 December 2005 to 31 March 2006 inclusive.	1 April 2016

Class order	Background	Sunsetting date
[CO 06/105]	[CO 06/105] provided certain financial reporting relief to listed companies for a financial year ending between 31 December 2005 and 31 March 2006.	1 April 2016
[CO 06/538]	[CO 06/538] provided temporary relief in relation to the requirement to give an exit statement to a former holder of a superannuation product, where the person ceased to hold the superannuation product before 1 July 2006.	1 October 2016
[CO 06/602]	[CO 06/602] temporarily deferred the operation of the enhanced fees and costs disclosure requirements for periodic statements and exit statements for superannuation products and managed investment products. The deferral was, for periodic statements, for reporting periods that started before 1 July 2007 and, for exit statements, for exit statements given before 1 July 2008.	1 October 2016
[CO 07/409]	<p>A number of general insurance disclosure provisions in Pt 7.9 were modified in 2005. The initial transition period (19 December 2005 to 20 June 2007) in Sch 5, item 2 to the Corporations Amendment Regulations 2005 (No. 5) was introduced to allow industry some flexibility and to reduce costs in adjusting to the changes.</p> <p>[CO 07/409] extended the transitional period to 31 August 2007 to coincide with the introduction of further additional changes to the general insurance disclosure provisions.</p>	1 October 2017
[CO 07/447]	[CO 07/447] gave financial advisers additional time to provide Statements of Advice in relation to the Simpler Super reforms that took effect on 1 July 2007. The relief applied to advice given before 1 July 2007.	1 October 2017
[CO 10/746]	[CO 10/746] corrected some drafting anomalies in the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) in relation to the streamlined application process for obtaining an Australian credit licence (credit licence) available to persons formerly regulated by state or territory credit laws. It also provided that eligible persons had until until 31 December 2010 to apply for a credit licence under the streamlined process.	1 October 2020
[CO 10/907]	[CO 10/907] deferred the start date for exempted special purpose funding entities to become members of an ASIC-approved external dispute resolution scheme to 1 April 2011. This was necessary for the entities to take advantage of the exemptions from the requirement to register with ASIC or hold a credit licence.	1 October 2017
[CO 11/261]	[CO 11/261] deferred the start date of the requirement for trustee companies to have a complaints resolution system under Ch 5D from 1 May 2011 to 1 January 2012.	1 April 2021
[CO 11/407]	[CO 11/407] extended the transitional arrangements for trustee companies who did not hold an AFS licence at the commencement of Ch 5D. The transitional period has since lapsed and all relevant trustee companies are now required to hold an AFS licence.	1 April 2022

Class order	Background	Sunset date
[CO 11/760]	[CO 11/760] gave effect to the intent of reg 28N of the National Credit Regulations and postponed the commencement of obligations to provide credit guides, proposal documents and quotes until 1 October 2011 (subject to certain requirements being met).	1 October 2021

Rationale

- 62 The transitional relief provided by the class orders in Table 3 has expired and the class orders may be repealed.

Class orders relating to operators of managed discretionary accounts on the Sydney Futures Exchange

Background

- 63 [CO 02/186] provided relief from certain sections of the Corporations Act to market participants on the Sydney Futures Exchange that operated a managed discretionary account.
- 64 [CO 02/1022] provided relief from certain sections of the Corporations Act to AFS licensees that are also associate participants of the Sydney Futures Exchange and operate a managed discretionary account or offer for issue or sale interests in a managed discretionary account.

Proposal

- D4 We propose to repeal [CO 02/186] and [CO 02/1022], which would otherwise sunset on 1 April 2016. You can access the current instruments by clicking on the following direct links: [\[CO 02/186\]](#) and [\[CO 02/1022\]](#).

Rationale

- 65 This relief in [CO 02/186] and [CO 02/1022] only applied until 11 December 2004, after which participants had to comply with Class Order [CO 04/194] *Managed discretionary accounts*.

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.
AIFRS	Australian equivalents to International Financial Reporting Standards
ASIC	Australian Securities and Investments Commission
Ch 5C (for example)	A chapter of the Corporations Act (in this example numbered 5C), unless otherwise specified
[CO 98/1805] (for example)	An ASIC class order (in this example numbered 98/1805)
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 <i>National Consumer Credit Protection Act 2009</i> that authorises a licensee to engage in particular credit activities
Div 2 (for example)	A division of the Corporations Act (in this example numbered 2), unless otherwise specified
FSR Act	<i>Financial Services Reform Act 2001</i>
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
National Credit Regulations	National Consumer Credit Regulations 2010
old Corporations Law	The law, set out in s82 of the <i>Corporations Act 1989</i> , which preceded the Corporations Act. Unless otherwise indicated, a reference to the old Corporations Law is a reference to the law as it stood before implementation of the <i>Corporate Law Economic Reform Program Act 1999</i>
PDS	Product Disclosure Statement

Term	Meaning in this document
Product Disclosure Statement	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 Note: See s761A for the exact definition.
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified
reg 7.1.07C (for example)	A regulation of the Corporations Regulations (in this example numbered 7.1.07C)
s601JA (for example)	A section of the Corporations Act (in this example numbered 601JA), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect