

2 September 2013

Mr Doug Niven
Senior Executive Leader
Financial Reporting & Audit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney, NSW 2000

Via email: policy.submissions@asic.gov.au

Dear Doug

Consultation Paper 209: Resignation, removal and replacement of auditors: Update to RG 26

Thank you for the opportunity to comment on the above Consultation Paper. CPA Australia and the Institute of Chartered Accountants in Australia (the Institute) have considered the proposals and our comments are set out below and in the Appendix.

CPA Australia and the Institute represent over 200,000 professional accountants in Australia. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

We appreciate the intention to consider substantial change to the current processes to assist the operation of fair and informed markets.

ASIC's overall approach to auditor resignations

CPA Australia and the Institute support the proposal that ASIC changes its fundamental approach to the resignation of auditors. The purpose of the current mechanisms for auditor resignation and removal in the Act are to support a confident and informed market. We believe this objective can be maintained while reducing the administrative burden on companies, auditors and ASIC by substantially simplifying the current process for auditor resignation, replacement and removal through revision of RG 26 *Resignation of auditors* and the Act. Our recommendations are set out in full in the Appendix.

Representatives of the Australian Accounting Profession



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The reasons for our recommendation include:

- The current process for auditor resignation, replacement and removal can lead to a number of practical issues that impact overall efficiency and effectiveness. These issues generally arise when the company wishes to change auditors or the auditor wishes to resign outside of the AGM cycle. The current requirement for ASIC approval and the need to meet the “exceptional circumstances” standard can make this process time consuming for both the company and the auditor. Issues also arise when the company fails to lodge the correct notifications with ASIC (for both public and proprietary companies) so that the record of auditor is not changed.
- A similar “seek and obtain consent” process is not evident in the examples of approaches in other jurisdictions set out in the appendix to the Consultation Paper. We are unable to identify any specific differences in the Australian market, other than the current legislative requirements, which would require a higher threshold for auditor resignation in Australia compared to these other jurisdictions.
- As set out in the Consultation Paper, since publication of RG 26, a number of legislative measures have been introduced into the Corporations Act to improve reliability of financial reports, and the audit function. Improvement has also been achieved through adoption of internationally recognised auditing and ethical standards for the conduct of audit.

If you have any questions regarding this submission, please do not hesitate to contact either Ram Subramanian (CPA Australia) at ram.subramanian@cpaaustralia.com.au or Liz Stamford (the Institute) at liz.stamford@charteredaccountants.com.au

Yours sincerely



Alex Malley
Chief Executive
CPA Australia Ltd



Lee White
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Appendix - Recommendations

Companies - Simplified process

We recommend that the process for all companies be amended to a simplified process as set out below.

Resignation or removal of an auditor outside of the AGM

1. The Board of Directors approves the resignation or removal of an auditor, appoints a new auditor, and notifies ASIC. This appointment will be effective until the next AGM, when an auditor is appointed by the shareholders.
2. The notification to ASIC is accompanied by a statement from the outgoing auditor, and a "consent to act" by the new auditor (see point 11 to 19 below).
3. If the above steps are followed, we propose that ASIC consent is given unless the outgoing auditor highlights an impediment, or consent from a new auditor is not provided (see points 13 and 16 below).
4. A subsequent AGM resolution to appoint a new auditor includes details of why the previous auditor resigned or was removed after the last AGM, so that the shareholders are informed and can ask questions at the AGM.
5. The AGM resolution is accompanied by the statement from the outgoing auditor and the consent to act by the new auditor, which were provided to the company at the time of the change (see point 6).
6. In the event that the shareholders choose not to appoint the new auditor proposed by the Board at the AGM, a process to appoint a new auditor will be implemented (using the current Corporations Act provisions which require a subsequent general meeting to appoint a new auditor).

Resignation or removal of an auditor at the AGM

7. The shareholders approve the resignation of the outgoing auditor and the appointment of the new auditor. The resolution to appoint a new auditor includes details of why the change has been made so that shareholders are informed and can ask questions at the AGM.
8. The resolution is accompanied by a statement from the outgoing auditor and a "consent to act" by the new auditor (see point 11 to 19 below).
9. ASIC is notified by the company after the appointment is approved at the AGM.
10. If the above steps are followed we propose that ASIC consent is not required. We appreciate that this would require a change in the legislation. An alternative recommendation in these circumstances is that ASIC consent is "automatic" as the shareholders have made the decision based on relevant information.

Shareholder authority to appoint auditors

11. To maintain shareholder authority by providing appropriate information, and to ensure that auditors are not coerced into resignation, we propose in all cases of change, the outgoing auditor provides a report which:
 - states that there are no impediments to the change (or otherwise outlines any such impediments)
 - lists the reason for the change, and
 - identifies any matters to be brought to the attention of ASIC and/or the shareholders.
12. We propose that this form should be included in the AGM resolutions to appoint new auditors and also with company notifications to ASIC on change of auditors.

13. Where the outgoing auditor raises an issue or states that there are impediments to change, and the change occurs outside of the AGM cycle, we propose that ASIC may disallow the change of auditor until such issues are resolved or require the company to hold a general meeting so the shareholders can decide on the issue.
14. Where the outgoing auditor raises an issue but the shareholders at the AGM determine to make the change anyway, we propose that ASIC should not withhold consent. In these circumstances, the shareholders are provided with relevant information to make the decision.
15. To maintain appropriate accountability and ensure auditors are not appointed without their knowledge, we propose that a form stating the incoming auditor's "consent to act" should be included in AGM resolutions to appoint a new auditor, and also in company notifications to ASIC.
16. If a "consent to act" form is not provided to ASIC for a change outside of the AGM cycle, we propose that ASIC may disallow the resignation/removal of the existing auditor until the company has a replacement. In some circumstances, we propose that ASIC may allow a resignation/removal without a consent, if to do otherwise would cause undue harm to the existing auditor. In such instances, the process in point 17 below would apply.
17. Where the Board of directors fail to find a new auditor outside of the AGM cycle, or the shareholders reject its choice of auditor and no replacement can be found, we propose that the entity be subject to penalties for failing to appoint an auditor and for failing to lodge audited accounts under the existing sections of the Corporations Act, and potentially the ASX Listing Rules. This should provide sufficient notice and remedy to the shareholders and market for a fair and informed market to operate.
18. In circumstances where the company becomes controlled by another entity, we propose that the auditor should be allowed to vacate office or continue until the next AGM and then retire. In either case, the processes above would apply.
19. Where the company is an AFSL holder, we propose that the requirements for the resignation of the AFLS auditor should be as above.

Registered schemes and compliance plans and non-company AFSL holders and credit licensees - Simplified process

As the AGM process is not applicable to many non-corporate entities, a slightly different process is required for registered schemes and compliance plans, non-company AFSL holders and credit licensees. However, we believe the resignation and removal process for these entities can also be simplified and aligned with the company process as far as possible. Our recommendations are:

20. The Board of Directors of the responsible entity (or the appropriate governing body for entities other than registered schemes) approve the resignation or removal, appoint a new auditor, and notify ASIC. The processes are similar to those above: that is notification to ASIC by the responsible entity, which provides an explanation for the change and is accompanied by a report from the existing auditor and a 'consent to act' from the new auditor.
21. This will provide ASIC with relevant and clear information regarding the reasons for the resignation, which will be sufficient for ASIC to decide whether it is appropriate to consent.
22. We are supportive of guidance which suggests usual timeframes for changes in appointments based on the reporting and filing timetables for the relevant entities. However, we note that there are valid circumstances which arise that necessitate auditor resignation at other points in time and so the timing of the request should not be a reason to withhold consent.

Other recommendations

- To ensure that auditors have a simple mechanism for checking that companies have correctly notified ASIC of changes in appointment, we recommend that ASIC establishes a secure online facility that provides individual auditors and audit firms with a list of all entities for which they are the auditor on record. This would prevent situations where auditors believe they have resigned but the company has not notified ASIC, or there has been some other administrative issue with the process. It will also help to avoid the current practical issues and disruptions to the entity that such situations cause.
- We believe that it would be beneficial to provide guidance on the responsibilities of auditors of entities who have been placed under administration or into liquidation.
- Fee disputes can impact on audit quality and can be a genuine reason for resignation. In the processes outlined above, the entity and the outgoing auditor would explain the dispute, which the shareholders can then assess and determine through the AGM process, or ASIC can assess on notification. We believe this is sufficient information for the operation of a fair market.
- We believe that the extended guidance on circumstances in which ASIC would consent to resignations and removals in the Consultation Paper is an improvement on the existing guidance. However we believe it can be improved further in light of our recommendations above.