



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 233

Remaking ASIC class orders on financial reporting

June 2015

About this paper

This consultation paper sets out ASIC's proposals to remake some of our class orders relating to financial reporting into ASIC instruments. Under the *Legislative Instruments Act 2003*, these class orders will expire ('sunset') if not remade. Other class orders relating to financial reporting due to sunset will be the subject of future consultation papers.

We are seeking feedback from stakeholders on our proposals to remake, without significant changes, the following class orders:

- Class Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered*, which is due to expire on 1 October 2015;
- Class Order [CO 05/639] *Application of accounting standards by non-reporting entities*, which is due to expire on 1 October 2015;
- Class Order [CO 05/642] *Combining financial reports of stapled security issuers*, which is due to expire on 1 October 2015;
- Class Order [CO 05/644] *Disclosing post balance date acquisitions and disposals*, which is due to expire on 1 October 2015; and
- Class Order [CO 06/441] *Including different registered scheme financial reports in a single document*, which is due to expire on 1 October 2016.

Note: The draft ASIC instruments are available on our website at www.asic.gov.au/cp under CP 233.

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 16 June 2015 and is based on the Corporations Act as at 16 June 2015.

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 August 2015 to:

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 Australian Securities and Investments Commission
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 Sydney NSW 2000
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What will happen next?

Stage 1	16 June 2015	ASIC consultation paper released
Stage 2	17 August 2015	Comments due on the consultation paper
Stage 3	September 2015	Commencement of remade instrument(s)

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 more than a minor or machinery regulatory impact.

Purpose of 'sunseting' 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.

Our approach to remaking legislative instruments

- 3 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's priorities of promoting investor and financial consumer trust and confidence and ensuring markets are fair, orderly and transparent.
- 4 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact, and are subject to sunseting, to ensure:
 - (a) we carefully consider the continuing regulatory and financial impact of the instrument; and
 - (b) the instrument retains its effectiveness in addressing an identified issue or problem.

- 5 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian Government Guide to Regulation](#). We will review, including public consultation, all class orders that have a significant regulatory impact before the scheduled sunset date. Where our review finds that a class order is not operating effectively and efficiently, we will prepare a RIS to assess our proposed changes to the class order. Where the class order is operating effectively and efficiently, we will remake the class order without substantive changes.

B Remaking ASIC class orders

Key points

We are proposing to remake:

- Class Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered*, which sunsets on 1 October 2015;
- Class Order [CO 05/639] *Application of accounting standards by non-reporting entities*, which sunsets on 1 October 2015;
- Class Order [CO 05/642] *Combining financial reports of stapled security issuers*, which sunsets on 1 October 2015;
- Class Order [CO 05/644] *Disclosing post balance date acquisitions and disposals*, which sunsets on 1 October 2015; and
- Class Order [CO 06/441] *Including different registered scheme financial reports in a single document*, which sunsets on 1 October 2016.

We have formed the preliminary view that these class orders are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework.

Each class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument. The draft ASIC instruments, which reflect the minor amendments proposed in this paper, are available on our website at www.asic.gov.au/cp under CP 233.

Your feedback

- 6 You are invited to comment on any of our proposals to remake 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 Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered*

Background

- 7 Under s319(4)–(6) of the Corporations Law (as preserved in the *Corporations Act 2001* (Corporations Act) through the transition provision in the table in s1408(7) of the Act), certain large proprietary companies are not required to lodge financial reports with ASIC if they meet certain conditions (exempt proprietary companies). Commonly referred to as 'grandfathered' large proprietary companies, these exempt proprietary

companies are required to have their financial reports audited before the reporting deadlines specified in Ch 2M of the Corporations Act in order to maintain their exemption from lodging financial reports.

- 8 Exempt proprietary companies were proprietary companies where there was no direct or indirect public ownership; that is, they were essentially owned by private individuals. The companies were exempt from the requirement to lodge financial reports because of their ownership structure and the low risk of investors being disadvantaged if financial reports were not lodged. Their status was preserved on transition to the Corporations Act.
- 9 Financial reports of companies, registered schemes and disclosing entities under Ch 2M were required to be prepared in accordance with the Australian equivalents to International Financial Reporting Standards (AIFRS) for the first time for years commencing on or after 1 January 2005.
- 10 Class Order [CO 05/637] *Additional month for first financial reports under AIFRS* (made under s341(1)) allowed non-disclosing entities an additional month to distribute to members their financial report for a financial year commencing between 1 January 2005 and 31 December 2005 (inclusive) and to lodge it with ASIC. The relief was not extended to small proprietary companies that prepare financial reports under a shareholder direction under s293.
- 11 A legislative condition for grandfathering is that financial reports are sent to members within four months of the end of each financial year. In the absence of [CO 05/638], grandfathered large proprietary companies would have lost their grandfathered status if they took advantage of the additional time to report provided by [CO 05/637].
- 12 In addition, [CO 05/638] allows certain large proprietary companies to retain their grandfathered status despite not having met the grandfathering conditions in particular circumstances; for example, the company having a foreign company shareholder (provided the company is not controlled by a foreign company), or having an authorised trustee company as a non-beneficial member.

Proposal

B1 To preserve its effect beyond the sunset date of 1 October 2015, we propose to continue the relief currently given by [CO 05/638] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/XX* at Attachment 1 to this consultation paper. You can access the current instrument on www.comlaw.gov.au or by clicking on the following direct link: [\[CO 05/638\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument;

- (b) reflect current drafting practice and update the format of the current document;
- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

Rationale

- 13 [CO 05/638] provides relief to allow companies to retain their grandfathered status despite taking advantage of [CO 05/637]. In the absence of ASIC relief, grandfathered companies that took advantage of [CO 05/637] would not meet a condition for retaining their grandfathered status. They would then be required to lodge a financial report in the year concerned and all subsequent years.
- 14 The class orders enable companies to retain their exempt status in circumstances that do not significantly detract from the conditions underlying their exemption.

Class Order [CO 05/639] *Application of accounting standards by non-reporting entities*

Background

- 15 Section 296(1) requires all entities that prepare financial reports under Ch 2M to comply with accounting standards. Some accounting standards are stated to apply to all entities reporting under Ch 2M and others are stated to apply only to entities reporting under Ch 2M that are 'reporting entities'.
- 16 Regulatory Guide 85 *Reporting requirements for non-reporting entities* (RG 85) outlines our view that non-reporting entities preparing financial reports under Ch 2M must comply with the recognition and measurement requirements of accounting standards in order to meet a number of general obligations under the Corporations Act.
- 17 Non-reporting entities that apply only the recognition and measurement requirements of accounting standards and not the disclosure requirements may not be able to take advantage of certain concessions from those requirements that are available to reporting entities. These concessions include:
- (a) concessions available under Australian Accounting Standard AASB 1 *First-time adoption of Australian accounting standards*; and
 - (b) transitional provisions or other concessions under a non-mandatory accounting standard.

- 18 For example, AASB 1 provides some concessions from reworking information to comply with the recognition and measurement requirements when an entity adopts the new accounting standards that apply for years commencing on or after 1 January 2005. These concessions would appear to be available only to entities that apply all of the requirements of the new standards, including all disclosure requirements. As non-reporting entities may not be required to comply with all disclosure requirements, the concessions may not be available to them.

Proposal

- B2** To preserve its effect beyond the sunset date of 1 October 2015, we propose to continue the relief currently given by [CO 05/639] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Non-Reporting Entities) Instrument 2015/XX* at Attachment 2 to this consultation paper. You can access the current instrument on www.comlaw.gov.au or by clicking on the following direct link: [\[CO 05/639\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument;
- (b) reflect current drafting practice and update the format of the current document;
- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

Rationale

- 19 It would be inconsistent for non-reporting entities to not have the advantage of concessions available to reporting entities. [CO 05/639] ensures that non-reporting entities can take advantage of concessions or other modifications of the recognition and measurement standards of accounting standards that are available to reporting entities.

Class Order [CO 05/642] *Combining financial reports of stapled security issuers*

Background

- 20 Sections 295(2) and 303(2) allow annual and half-year financial reports to include only those financial statements specified by the accounting standards. An entity's financial report is not permitted to include the financial statements of another entity.

- 21 One of the entities in a stapling arrangement is identified as the parent entity and prepares consolidated or combined financial statements covering the whole of the stapled group. However, other entities that are stapled issuers are often required to prepare consolidated financial statements for the entities they control or single-entity financial statements.

Proposal

B3 To preserve its effect beyond the sunset date of 1 October 2015, we propose to continue the relief currently given by [CO 05/642] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Stapled Group Reports) Instrument 2015/XX* at Attachment 3 to this consultation paper. You can access the current instrument on www.comlaw.gov.au or by clicking on the following direct link: [\[CO 05/642\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument;
- (b) reflect current drafting practice and update the format of the current document;
- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

Rationale

- 22 Because of the interrelationships of the stapled entities it is often useful for users if all of the financial statements are presented in a single financial report. [CO 05/642] allows the financial statements of all members of the stapled group to be presented in adjacent columns in a single financial report. The consolidated or combined financial statements of the parent entity may be presented in a section separate from the financial statements of the other group members.

Class Order [CO 05/644] *Disclosing post balance date acquisitions and disposals*

Background

- 23 Sections 295(2) and s303(2) allow financial reports to include only those financial statements specified in those provisions.
- 24 Those provisions prevent an entity from explaining a material acquisition or disposal of entities or businesses that occurs after the end of a reporting period in the notes to their financial statements in the form of a pro forma balance sheet.

Proposal

B4 To preserve its effect beyond the sunset date of 1 October 2015, we propose to continue the relief currently given by [CO 05/644] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Post Balance Date Reporting) Instrument 2015/XX* at Attachment 4 to this consultation paper. You can access the current instrument on www.comlaw.gov.au or by clicking on the following direct link: [\[CO 05/644\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument;
- (b) reflect current drafting practice and update the format of the current document;
- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

Rationale

- 25 [CO 05/0644] allows the presentation of a pro forma balance sheet in the notes to the financial statements to explain the financial effect of material acquisitions and disposals of entities and businesses after the end of a reporting period. Such a presentation may be the most meaningful way to explain the effect of the transaction.
- 26 Disclosing entities could provide similar information in separate announcements to the market; however, we consider that stakeholders are better served if the information is disclosed and read in the context of the entity's financial report.

Class Order [CO 06/441] *Including different registered scheme financial reports in a single document*

Background

- 27 Sections 295(2) and 303(2) only allow for annual and half-year financial reports to include those financial statements specified by the accounting standards. An entity's financial report is not permitted to include the financial statements of another entity.
- 28 When an entity is a responsible entity for a number of registered schemes, there is a significant duplication of effort to produce individual financial reports for each registered scheme.

Proposal

B5 To preserve its effect beyond the sunset date of 1 October 2016, we propose to continue the relief currently given by [CO 06/441] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Related Scheme Reports) Instrument 2015/XX* at Attachment 5 to this consultation paper. You can access the current instrument on www.comlaw.gov.au or by clicking on the following direct link: [\[CO 06/441\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument;
- (b) reflect current drafting practice and update the format of the current document;
- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

Rationale

- 29 It has been the practice of some responsible entities to include the financial statements of different registered schemes for which they are the responsible entity in adjacent columns in a single financial report. This practice has also been adopted by different responsible entities with a common beneficial owner in relation to the schemes for which they are responsible entities.
- 30 [CO 06/441] allows responsible entities to continue the practice of including the financial statements of related registered schemes that have a common responsible entity (or related responsible entities) in adjacent columns in a single financial report. The relief applies to annual financial reports, concise financial reports and half-year financial reports.

Key terms

Term	Meaning in this document
AASB 1	Australian Accounting Standard AASB 1 <i>First-time adoption of Australian accounting standards</i>
AIFRS	Australian equivalents to International Financial Reporting Standards
ASIC	Australian Securities and Investments Commission
Ch 2M (for example)	A Chapter of the Corporations Act (in this example numbered 2M), unless otherwise specified
[CO 05/638] (for example)	An ASIC class order (in this example numbered 05/638)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
RIS	Regulation Impact Statement
RG 85 (for example)	An ASIC regulatory guide (in this example numbered 85)
s296(1) (for example)	A section of the Corporations Act (in this example numbered 296(1)), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect