



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 239

# Disclosure documents: Update to ASIC instruments and guidance

September 2015

## About this paper

This consultation paper seeks feedback on our proposals to make new legislative instruments relating to Ch 6D of the *Corporations Act 2001* (Corporations Act). It also seeks feedback on our proposals to remake or revoke a number of class orders relating to Ch 6D before they expire under the *Legislative Instruments Act 2003* (Legislative Instruments Act).

In addition, this consultation paper seeks feedback on our proposals to consolidate—and, in relation to certain discrete issues, update—our Ch 6D regulatory guidance, including our proposal to issue a new regulatory guide, draft Regulatory Guide 000 *Offering securities under a disclosure document* (draft RG 000).

### 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 September 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

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

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

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

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

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on the procedure for offering securities for issue or sale under Ch 6D. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section G, 'Regulatory and financial impact'.

### 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](http://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 27 November 2015 to:

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## What will happen next?

|                |                   |  |
|----------------|-------------------|--|
| <b>Stage 1</b> | 17 September 2015 | ASIC consultation paper released       |
| <b>Stage 2</b> | 27 November 2015  | Comments due on the consultation paper |
| <b>Stage 3</b> | March 2016        | Regulatory guide released              |

## A Background to the proposals

### 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.

We are consulting on our proposals to remake or repeal various class orders relating to Ch 6D of the *Corporations Act 2001* (Corporations Act) before they expire under these sunseting provisions.

In the course of reviewing these class orders, we also identified the need for two new legislative instruments. We are consulting on these.

We are also consulting on proposed consolidation of and updates to our regulatory guidance on Ch 6D.

### 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 sunset, 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 instrument without substantive changes.

## Background to our update of Ch 6D legislative instruments and regulatory guidance

- 6 ASIC has general administration of the Corporations Act, including Ch 6D, which relates to fundraising through the issue or sale of securities.
- 7 Over the years we have published a range of regulatory guidance setting out our interpretation of Ch 6D (and its predecessors). This guidance seeks generally to promote commercial certainty while balancing the fundamental investor protections underpinning the fundraising regime enshrined in Ch 6D.
- 8 Under s741 of the Corporations Act, ASIC has the power to provide exemptions from specified provisions of Ch 6D or make declarations that Ch 6D applies as if specified provisions were modified, varied or omitted. We have—consistent with our own statutory objectives and the underlying policy of Ch 6D—executed an array of relief in relation to Ch 6D since the enactment of the Corporations Act. Thirty-one of these Ch 6D (or Ch 6D related) class orders are scheduled to sunset over the next few years.
- 9 This imminent sunset has provided us with an opportunity to undertake a review of these Ch 6D class orders and also our regulatory guidance more generally. This consultation paper seeks your feedback on our proposals to:
- (a) make two new legislative instruments to address identified problems and reduce business costs;
  - (b) remake 26 of our sunset class orders into 13 new legislative instruments;



- (c) repeal five of our sunseting class orders; and
- (d) update and consolidate a range of our current Ch 6D regulatory guidance.

## New legislative instruments to reduce business costs

- 10 We are proposing a new legislative instrument to modify the operation of s723 and 724 as they apply to the minimum subscription and quotation condition requirements. Our proposed relief will promote certainty in relation to the operation of the provisions and remove any need for issuers to apply to ASIC for individual relief to extend the relevant three-month (quotation condition) and four-month (minimum subscription condition) periods.
- 11 We are also proposing a new legislative instrument to provide disclosure and on-sale relief for regulatory capital instruments issued by banks and other prudentially regulated bodies (bank hybrids), together with the ordinary shares issued on conversion of such instruments. This proposed new instrument is based on the form of individual instruments of relief we routinely provide in connection with offers of bank hybrids to retail and wholesale investors.
- 12 This individual relief is based on the relief in Class Order [CO 00/195] *Offer of convertible securities under s713*, Class Order [CO 04/671] *Disclosure for on-sale of securities and financial products* and Class Order [CO 10/322] *On-sale for convertible notes issued to wholesale investors*.
- 13 Our proposals for these new legislative instruments are set out in Section B.

## Legislative instruments reviewed

- 14 We are proposing to consolidate 26 existing sunseting class orders into 13 new legislative instruments and repeal five class orders. Appendix 1 summarises the legislative instruments that we have reviewed, our proposed course of action and a cross-reference to the relevant proposal in this paper. Table 1 in Appendix 1 sets out the class orders we are remaking (see Section C) and Table 2 in Appendix 1 sets out those we are repealing (see Section D).
- 15 Given that we have decided to consolidate those of our sunseting class orders that deal with broadly similar subject matter, Appendix 1 includes several sunseting class orders that do not primarily relate to Ch 6D but will be remade and consolidated with a sunseting Ch 6D class order. For example, we are proposing to remake and consolidate some of our Ch 7 class orders that address similar matters.

## Regulatory guides

### Consolidating existing guidance into new regulatory guide

- 16 The following seven regulatory guides were assessed as part of our broader review of existing policies relating to Ch 6D:
- (a) Regulatory Guide 23 *Updating and correcting prospectuses and application forms* (RG 23);
  - (b) Regulatory Guide 56 *Prospectuses* (RG 56);
  - (c) Regulatory Guide 99 *Quotation of securities offered by prospectus (s1031)* (RG 99);
  - (d) Regulatory Guide 152 *Lodgment of disclosure documents* (RG 152);
  - (e) Regulatory Guide 155 *Debenture prospectuses* (RG 155);
  - (f) Regulatory Guide 157 *Financial reports for offer information statements* (RG 157); and
  - (g) Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158).
- 17 We are proposing to update and consolidate our policies in these regulatory guides. We are consulting on draft Regulatory Guide 000 *Offering securities under a disclosure document* (draft RG 000), which consolidates these guides and sets out our policy on the different types of disclosure documents and the procedure for offering securities for issue or sale under a disclosure document: see proposal E1.
- 18 Table 3 in Appendix 2 cross-references each section of draft RG 000 with its policy source in our existing guidance. This proposed consolidation of our regulatory guidance will result in the revocation of each of the seven regulatory guides identified in paragraph 16.
- 19 Where our review has identified policy that is no longer relevant, we are proposing to allow that policy to lapse. We are also proposing to issue new guidance on certain discrete matters where relevant. The bulk of our new guidance relates to our update to our current policy on minimum subscription and quotation conditions in RG 99. Section E provides further detail on these proposals.
- 20 We consider that draft RG 000 (dealing primarily with our policies on the different types of disclosure documents and the procedural elements of offering securities for issue or sale under a disclosure document), when read together with our existing guidance on the content of disclosure documents in draft Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228), will make our regulatory guidance on Ch 6D more clear and concise, increasing its usefulness for our stakeholders and the market more broadly.

## Updating Regulatory Guide 173 and revoking Regulatory Guide 213

- 21 We are also proposing to update Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173) to consolidate:
- (a) our existing guidance found in that guide;
  - (b) our existing guidance from Regulatory Guide 213 *Facilitating debt raising* (RG 213) regarding the on-sale of quoted securities that are issued on the conversion of convertible notes issued to wholesale investors or otherwise without prospectus disclosure; and
  - (c) provide proposed new guidance on disclosure and on-sale relief for bank hybrids (see proposal F1).
- 22 Following the repeal of Class Order [CO 10/321] *Offers of vanilla bonds* in December 2014, the remaining guidance in RG 213 is redundant and we are therefore proposing to revoke that guide: see proposal F2.

## Other minor updates to existing Ch 6D guides

- 23 We are also proposing to issue minor updates to our guidance in the following Ch 6D regulatory guides:
- (a) Regulatory Guide 55 *Statements in disclosure documents and PDSs: Consent to quote* (RG 55);
  - (b) Regulatory Guide 66 *Transaction-specific disclosure* (RG 66);
  - (c) Regulatory Guide 189 *Disclosure relief for rights issues* (RG 189); and
  - (d) RG 228 (see proposal F3).
- 24 Our updates to these regulatory guides are minor, to reflect discrete changes to the legislative instruments referenced in those guides and our policy reorganisation. For example, we have moved some minor parts of these guides into draft RG 000, where we consider that guidance is more appropriately and logically located there.
- 25 There are a number of other regulatory guides that relate to Ch 6D. Many of these regulatory guides have been recently issued or reissued or do not require updating as a result of our review of sunseting instruments and related guidance. Accordingly, these will remain unchanged: see Appendix 2 in draft RG 000 for a list of these guides.

## Your feedback

- 26 We are seeking feedback from our stakeholders in response to any or all of our proposals as set out in this consultation paper.

- 27 We are seeking feedback from our stakeholders on the areas in which we are proposing changes to our current policy or legislative instruments. Feedback from our regulated population provides useful insight to us about the operation of our policy in practice, as well as giving stakeholders the opportunity to comment on areas of updated or new policy that may affect them.
- 28 We are also interested in receiving specific feedback on the update and consolidation of our regulatory guidance at a conceptual level, particularly whether this type of update to guidance is helpful to stakeholders and other users of our guidance.
- 29 We also welcome general feedback on the operation of overarching policy in this area or other areas which you feel may be of use to us.

## B Making new legislative instruments

### Key points

While undertaking our review of our Ch 6D class orders, we identified two particular circumstances where we consider that new legislative instruments may be warranted:

- to clarify the application of the minimum subscription and quotation conditions, and to streamline the process for an issuer to extend the relevant time periods; and
- to provide disclosure and on-sale relief for offers of bank hybrids, together with the ordinary shares issued on conversion of such instruments.

We consider that issuing a new legislative instrument in these circumstances is reflective of our broader focus on reducing business costs in a manner that is consistent with the underlying principles of Ch 6D and our statutory objectives.

### Minimum subscription and quotation conditions

#### Proposal

- B1** We propose to make a new legislative instrument that modifies s723 and 724 to:
- (a) ensure that the minimum subscription and quotation condition time periods applying to all applicants under an offer are synchronised and operate consistently;
  - (b) streamline the process for an issuer to extend the time period for satisfaction of the minimum subscription and quotation conditions by:
    - (i) introducing the concept of a 'refresh document', a supplementary or replacement disclosure document under s724(3F)(a) that refreshes the time periods of minimum subscription or quotation conditions for an offer; and
    - (ii) setting out prescribed information and statements to be included in that refresh document; and
  - (c) clarify that an issuer must repay the money received from applications if the minimum subscription or quotation time periods expire before those conditions are met.

See draft ASIC Corporations (Minimum Subscription and Quotation Condition) Instrument 2015/XX in Attachment 1 to this consultation paper.

*Your feedback*

- B1Q1 Do you agree with our proposal to make a legislative instrument to synchronise the relevant time periods for all applicants under an offer? If not, why not?
- B1Q2 Do you agree with our proposal to introduce a process for extending the minimum subscription condition and quotation condition time periods? If not, why not?
- B1Q3 Do you agree with our proposal to require prescribed information and statements to be used to activate a refresh document? If not, why not?
- B1Q4 Are there any other conditions or requirements that should apply to our modification?

**Rationale**

- 30 A minimum subscription condition is a statement in a disclosure document that securities will not be issued or transferred unless the issuer receives applications for a minimum number of securities or raises a minimum amount. The minimum subscription condition must be satisfied within four months of the date of the disclosure document: see s723(2) and 724(1)(a).
- 31 A quotation condition is a statement (express or implied) that the securities offered under a disclosure document will be quoted on a financial market. The quotation condition must be satisfied within three months of the date of the disclosure document: see s723(3) and 724(1)(b)(ii).
- 32 Our modifications are proposed only to address a technical problem arising in the case of supplementary or replacement disclosure documents. The effect of our relief is consistent with our observations of market practice and we do not anticipate that our proposed modification will have a broader impact on issuers.

**Date of disclosure document**

- 33 Sections 719(4)–(5) provide that, once lodged, a replacement disclosure document (or supplementary disclosure document, together with the original) is the ‘disclosure document’ for the application of Ch 6D to events that occur after lodgement.
- 34 For issuers subject to the minimum subscription and quotation conditions, s719(4)–(5) operate so that:
- (a) the minimum subscription and quotation condition time periods are calculated based on the date of the original disclosure document for applications received in response to an offer under the original disclosure document; and
  - (b) the minimum subscription and quotation condition time periods are calculated based on the date of any supplementary or replacement

disclosure document for applications received in response to an offer under that supplementary or replacement disclosure document.

- 35 To address the inconsistent application of the minimum subscription and quotation conditions in circumstances where a supplementary or replacement disclosure document is lodged before the expiry of the relevant time period, we have proposed relief to clarify that the minimum subscription and quotation condition time periods are to be calculated based on the date of the original disclosure document. This will be the default position, unless a refresh document, as described in paragraphs 37–38, is lodged.

Note: See paragraphs 37–41 for our proposed relief for refreshing the minimum subscription and quotation condition time periods and how our relief operates to ‘reset’ the date for calculating those time periods for all applicants.

- 36 Our proposed relief would ensure that the time periods applying to applications are synchronised and operate consistently, promoting certainty for issuers, investors and operators of any prescribed financial market on which the issuer seeks quotation of the securities the subject of the offer.

#### **Refresh document**

- 37 Our proposed relief will also streamline the procedure for issuers to extend (or ‘refresh’) the minimum subscription and quotation condition time periods, or remove those conditions from an offer.
- 38 Our proposed relief modifies s724 to prescribe certain information and statements that must be included in a refresh document. All refresh documents must be accompanied by a one-month period in which applicants may withdraw their application and be repaid.
- 39 The purpose of this prescribed disclosure is to ensure investors are provided with not only the new dates by which the minimum subscription and/or quotation conditions must be met, but also particular information regarding the progress of the offer (e.g. the number and amount of applications received to date, and any indication provided by the prescribed financial market) to enable them to make an informed decision about whether to exercise their withdrawal rights. While we have prescribed this disclosure to ensure these matters are addressed in a consistent way in each refresh document, we consider this information would also be required under s710.
- 40 When an issuer refreshes the time periods for complying with the minimum subscription and/or quotation conditions, our relief ensures that the relevant periods are reset for all applicants and commence on the date of the refresh document.
- 41 Our proposed relief would operate to differentiate a refresh document (which must include the prescribed information and statements) from all other supplementary or replacement disclosure documents, and ensures that only

refresh documents restart the time periods in s723(2)–(3) for both existing applications and subsequent applications.

Note: A refresh document can contain other information that would ordinarily be included in a supplementary or replacement disclosure document. For example, an issuer may wish to provide updated information on a business acquisition referred to in the original disclosure document by issuing a supplementary or replacement disclosure document that can also operate as a refresh document.

### Expiry of minimum subscription or quotation condition time period

- 42 Our proposed relief also provides that if the relevant minimum subscription or quotation condition time periods expire before those conditions are met, the issuer must repay the money received from applications as soon as practicable after the end of the relevant period.

## Disclosure and on-sale relief for offers of regulatory capital instruments

### Proposal

- B2 We propose to make a new legislative instrument to provide disclosure and on-sale relief for bank hybrids, together with the ordinary shares issued on conversion of such instruments: see draft ASIC Corporations (Regulatory Capital Securities) Instrument 2015/XX in Attachment 2 to this consultation paper. This draft instrument will allow retail offers to be made under a transaction-specific prospectus, and be a substitute for individual instruments of relief (based on the relief in [CO 00/195], [CO 04/671] and [CO 10/322]) we routinely provide in connection with offers of bank hybrids to retail and wholesale investors.

#### Your feedback

- B2Q1 Do you have any comments on our proposal to provide disclosure and on-sale relief for offers of bank hybrids?

### Rationale

- 43 As discussed in Report 365 *Hybrid securities* (REP 365), authorised deposit-taking institutions, general insurers and life insurers (i.e. banks and other prudentially regulated bodies) are regular issuers of ‘capital instruments’ more commonly known as hybrid securities (bank hybrids), which are used to meet the issuer’s regulatory capital requirements under the relevant prudential standards.
- 44 Those prudential standards prescribe that, in order to qualify as regulatory capital, bank hybrids must include a number of features; for example, the standards require that on the occurrence of certain trigger events, the bank hybrids must be written-off or converted into ordinary shares.



**Transaction-specific disclosure and on-sale relief for retail offers of bank hybrids**

- 45 Where bank hybrids are convertible into continuously quoted securities of the issuer, they could be offered to retail investors using a transaction-specific prospectus (in reliance on a broad reading of [CO 00/195]), and the securities issued on conversion then freely on-sold without further disclosure (in reliance on Category 3 of [CO 04/671]).
- 46 In practice, however, this relief has not been available to banks and other prudentially regulated bodies because:
- (a) in many cases, the potential interposition of a non-operating holding company (which would become the listed parent of the issuer) means the securities to be issued on conversion may be those of a non-operating holding company, rather than the issuer; and
  - (b) in other cases, typically where such a holding company has already been established, it may be optimal from a capital management perspective for particular operating companies to issue bank hybrids directly, where those instruments are required to convert into securities in the listed holding company.
- 47 For nearly a decade, we have routinely granted relief to permit the use of a transaction-specific prospectus for offers of bank hybrids, which was considered to be broadly consistent with the policy underlying [CO 00/195] (on which the drafting of the individual instruments was based) and [CO 04/671] (on which the individual instruments relied to permit subsequent on-sale of the securities issued on conversion).
- 48 Broadly speaking, when we grant individual relief, we consider the use of a transaction-specific prospectus for offers of bank hybrids is appropriate because:
- (a) given the features and risks of bank hybrids, and the way in which these determine the expected return to investors, prospectus disclosure needs to be focused to a great degree on the terms of the bank hybrids (see Section C of REP 365); and
  - (b) issuers of bank hybrids (or their listed parent company) are subject to the continuous disclosure regime, compliance with which is informed by ongoing entity or group-level disclosure requirements regarding capital adequacy, capital instruments and risk exposure (required by the relevant prudential standards). Accordingly, investors in bank hybrids are able to access sufficient information to make an informed investment decision in relation to ordinary shares in the issuer (or its listed parent company where current or proposed holding structures are involved).

49 The proposed legislative instrument means that issuers will no longer need to seek individual relief for each offer of bank hybrids. In order to clearly delineate the scope and underlying policy of ASIC Corporations (Offers of Convertibles) Instrument 2015/XX, and considering the historical reliance on the broad policy underlying [CO 00/195] when granting relief for bank hybrids, it is appropriate that a distinct legislative instrument be used to provide future relief for bank hybrids, and in so doing restate the underlying policy for that relief independent of the relief available to all issuers of certain convertible securities.

50 As discussed in our proposed update to RG 173 (see proposal F1), capital instruments issued by prudentially regulated bodies represent a special case where relief is considered appropriate for offers of securities that could not rely on draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX. The fact that relief is available for capital instruments with particular terms does not indicate that we will or may grant individual relief for convertible securities with similar terms issued by other entities.

**On-sale relief for offers of bank hybrids made without prospectus disclosure**

51 Similar structural issues to those discussed at paragraph 46 arise in relation to [CO 10/322]. While offers of bank hybrids to wholesale investors do not require prospectus disclosure, in the absence of an exception or relief, the on-sale of securities issued on conversion of those hybrids will require disclosure.

52 Since early 2014, we have routinely granted individual relief based on the principles in [CO 10/322] for offers of bank hybrids where that class order was not available because of the position of the issuing bank within current or proposed holding structures.

53 To reflect ongoing programme issuance as part of bank wholesale fundraising, relief is provided for offers made in a fixed three-year period following the granting of the relief. Despite this, in a number of instances subsequent technical accounting relief and disclosure relief for other fundraising activity has required the wholesale relief instruments to be reissued. The proposed legislative instrument means that issuers will not require individual relief for their wholesale regulatory capital programmes, and in so doing removes the risk that individual instruments of relief may be rendered ineffective by other subsequent, often unrelated, relief instruments.

54 We have also granted relief on similar terms to facilitate offers of bank hybrids by the New Zealand subsidiaries of Australian banks, where those offers are made to investors in New Zealand with disclosure under New Zealand law, and where the securities issued on conversion of the bank hybrids are those of the Australian parent or holding company. The proposed

instrument means that issuers will no longer need to seek individual relief for these offers by foreign subsidiaries where they can permissibly be made without disclosure under Pt 6D.2.

- 55 In granting the individual relief noted at paragraphs 52–54 we have historically imposed initial and ongoing disclosure requirements based on those in [CO 10/322]. A number of issuers questioned whether the ongoing disclosure requirements provided any meaningful additional information given issuers of bank hybrids (or their listed parent company) are subject to the continuous disclosure regime, compliance with which is informed by ongoing entity or group-level disclosure requirements regarding capital adequacy, capital instruments and risk exposure (required by the relevant prudential standards).
- 56 We have now had the benefit of considering the disclosure actually provided by banks to satisfy the initial and ongoing disclosure requirements included in individual relief based on [CO 10/322], and agree that the incremental ongoing disclosure obligations imposed result in little additional information being provided to the market.
- 57 The draft instrument therefore does not impose ongoing disclosure obligations for offers of bank hybrids that do not require disclosure under Pt 6D.2. We consider investor protection is not reduced, as initial disclosure (in the form of an ‘enhanced cleansing notice’) is still required and relief is only available to entities that are also subject to prudential regulation which includes ongoing entity or group-level disclosure requirements in addition to general continuous disclosure obligations.

## C Remaking Ch 6D class orders

### Key points

We are proposing to remake 25 class orders into 13 legislative instruments: see Table 1 in Appendix 1.

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 to give greater clarity, while preserving the current effect of the instrument. We have also updated legislative references and definitions and corrected any minor drafting errors where required. The draft ASIC instruments, which reflect the minor amendments proposed in this paper, are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 239.

## Relief from requirement to obtain consent before including certain statements in regulated documents

### Background

- 58 Chapters 6, 6D and 7 provide that certain regulated documents may only include, or be accompanied by, statements by a person—or a statement based on a statement by a person—if that person has consented to its inclusion in the document: see s636(3), 638(5), 716(2) and 1013K(1).
- 59 Class Order [CO 02/141] *Experts: citing in Product Disclosure Statements*, Class Order [CO 07/428] *Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS*, Class Order [CO 07/429] *Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers* and Class Order [CO 13/523] *Citation of experts and consent to quote* provide, where certain criteria are satisfied, relief from the requirement to obtain consent in relation to the following statements in regulated documents:
- (a) statements made by government officials;
  - (b) statements already published in books, journals and comparable publications;
  - (c) statements taken from certain geological reports; and
  - (d) trading data from prescribed financial markets or approved foreign exchanges.
- 60 The policy underlying the relief is well established and covered at length in RG 55.

- 61 Broadly, without the relief afforded by this suite of instruments, persons lodging regulated documents (such as bidder's statements, target's statements, disclosure documents and Product Disclosure Statements (PDSs)) would be required to obtain the consent of relevant persons (including market operators, government officials, preparers of historical geological reports) in order to include statements of the type described in paragraph 59. Such a requirement would impose considerable commercial burdens (both in time and cost) on persons lodging those regulated documents.

### Proposal

- c1** To preserve their effect beyond their respective sunset dates, we propose to continue the relief currently given by [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Consents to Statements) Instrument 2015/XX at Attachment 3 to this consultation paper. You can access the current instruments on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct links: [\[CO 02/141\]](#), [\[CO 07/428\]](#), [\[CO 07/429\]](#) and [\[CO 13/523\]](#).

The only changes proposed are to:

- (a) combine [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523] into one instrument;
- (b) update the list of approved foreign markets from which trading data can be referenced;
- (c) remove s1013K(1B)(d)(v), as notionally inserted by [CO 07/428], from the proposed new legislative instrument;
- (d) update the name of the legislative instrument; and
- (e) reflect current drafting practice and update the format of the current document.

#### *Your feedback*

- C1Q1 Do you agree with our proposal to reissue and consolidate [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523]? If not, why not?
- C1Q2 Do you agree with the minor change we have proposed in relation to the notionally inserted s1013K(1B)(d)(v)?

### Rationale

#### Updating list of approved foreign markets

- 62 We have proposed to update (but not expand) the list of approved foreign markets cited in each of [CO 07/428] and [CO 07/429] to reflect changes to the names of various approved foreign markets since the date these legislative instruments were first issued.

**Removal of s1013K(1B)(d)(v) as notionally inserted by [CO 07/428]**

- 63 Section 1013K(1B)(d) provides that relief from the consent requirement for a historical geological report reference included in a PDS does not apply in circumstances where the historical geological report was prepared or commissioned by certain persons associated in some way with the person offering the financial product under the PDS, or from whom the person offering the financial product acquired, or shared an interest in, the tenement the subject of the historical geological report: see s1013K(1B)(d)(i)–(iv).
- 64 Section 1013K(1B)(d)(v) extends the range of associated persons in s1013K(1B)(d) to include a scenario where the historical geological report is included in a PDS offering financial products that are warrants, or legal or equitable rights or interests mentioned in s764A(b)(ii) or 764(ba)(ii) that are not warrants.
- 65 We consider the circumstances countenanced by s1013K(1B)(d)(v) are extremely remote and, in circumstances where they arise, are likely to be covered by s1013K(1B)(d)(i)–(iv). Accordingly, we have not proposed to include s1013K(1B)(d)(v) in our proposed new legislative instrument.

**Technical relief for transaction-specific disclosure, cleansing notices and rights issues****Background****Transaction-specific disclosure**

- 66 Sections 713 and 1013FA permit a disclosing entity to prepare a disclosure document or PDS with specified limited content (transaction-specific disclosure) for continuously quoted securities. Transaction-specific disclosure is predicated on the fact that such entities are subject to the continuous disclosure requirements of the Corporations Act and that the market generally should have all information necessary to reach an informed view about those securities.

**Cleansing notice regime**

- 67 The Corporations Act requires a person to prepare a disclosure document or PDS for an offer to sell securities or financial products where:
- (a) the offer is made within 12 months of issue;
  - (b) there was no disclosure at the time of issue; and
  - (c) certain other criteria set out in s707 (for securities) or 1012C (for financial products) are satisfied.

68 A prospectus or PDS is not required for a sale offer of securities or financial products that are quoted and for which a ‘cleansing notice’, containing prospectus-like or PDS-like disclosure under s708A or 1012DA, has been lodged with the relevant operator of the financial market.

### **Rights issue of quoted securities and quoted financial products**

69 Sections 708AA and 1012DAA permit an entity to make a rights issue of quoted securities and quoted financial products without a disclosure document or PDS, provided certain requirements are satisfied.

### **Class order relief**

70 If an entity, its directors or auditor are covered by certain ASIC instruments (i.e. class orders made under s341 that give technical accounting and financial reporting relief, and certain class orders made under s741), they would be ineligible:

- (a) to use transaction-specific disclosures under s713 and 1013FA;
- (b) to rely on the ‘cleansing notice’ exemption under s708A and 1012DA; and
- (c) to make a rights issue of quoted securities and quoted financial products without a disclosure document or PDS under s708AA and 1012DAA.

71 Provided the relevant conditions are met, Class Order [CO 01/1455] *Continuously quoted securities*, Class Order [CO 04/672] *Extension of on-sales exemption* and Class Order [CO 07/571] *Disclosure exemption for rights issues* operate to allow the entity to make offers as set out in paragraphs 70(a)–70(c). This is because the relief given under s341 and s741 does not detract from the level of information available to the market.

Note: [CO 01/1455] gives relief relating to the use of transaction-specific disclosure, [CO 04/672] gives relief relating to the cleansing notice exemptions and [CO 07/571] gives relief relating to certain rights issues.

## **Proposal**

**c2** To preserve their effect beyond their respective sunset dates, we propose to continue the relief currently given by [CO 01/1455], [CO 04/672] and [CO 07/571] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX at Attachment 4 to this consultation paper. You can access the current instruments on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct links: [\[CO 01/1455\]](#), [\[CO 04/672\]](#) and [\[CO 07/571\]](#).

The only changes proposed are to:

- (a) combine [CO 01/1455], [CO 04/672] and [CO 07/571] into one instrument, modifying s9, Ch 6D and Pt 7.9 to disregard technical relief instruments;

- (b) where an entity would otherwise be ineligible (because it is covered by individual relief made under s340 that relieves the entity, or any person as director or auditor of the entity, from the requirements of s323D(3)) extend the relief to permit the entity:
  - (i) to use transaction-specific disclosures under s713 and 1013FA;
  - (ii) to rely on the cleansing notice exemption under s708A and 1012DA; and
  - (iii) to make a rights issue of quoted securities and quoted financial products without a disclosure document or PDS under s708AA and 1012DAA;
- (c) update the name of the legislative instrument; and
- (d) reflect current drafting practice and update the format of the current document.

#### *Your feedback*

- C2Q1 Do you agree with our proposal to remake and consolidate [CO 01/1455], [CO 04/672] and [CO 07/751]? If not, why not?
- C2Q2 Do you agree with our proposal to extend the scope of the relief to make it available to entities subject to individual ASIC relief from s323D(3)?

### **Rationale**

- 72 We consider this relief is presently operating efficiently and effectively. For brevity, however, we have proposed to consolidate the existing relief into one legislative instrument that will give relief from both Ch 6D and Pt 7.9 for issuers.
- 73 The current relief only allows entities to disregard certain class orders made under s341 and 741, which do not detract from the level of information available to the market.
- 74 We have proposed to extend our relief to allow entities to disregard individual relief made under s340 that relieves the entity, or any person as director or auditor of the entity, from the requirements of s323D(3). This recognises that in granting relief from s323D(3), we will have already considered whether the relief will detract from the level of information available to the market.



## Relief from exposure period for options over listed securities, quoted securities and managed investment products, and supplementary and replacement disclosure documents

### Background

- 75 Class Order [CO 00/168] *Relief from exposure period: quoted securities* provides relief so that a disclosure document will not be subject to an exposure period if the securities being offered are of a class already quoted. For example, without our relief disclosure documents for offers by a body listed on ASX would be subject to an exposure period because—even though such offers relate to securities of a class that are already quoted—the effect of ASX Listing Rule 2.4 is that there is no automatic right of quotation for securities even if those securities are of a class that is already quoted, so the securities would be regarded as non-quoted for the purposes of s727(3) at the time of the offer.
- 76 Class Order [CO 00/169] *Relief from exposure period: Supplementary and replacement prospectuses* provides—for the avoidance of doubt—that supplementary and replacement disclosure documents lodged under s719 are not subject to an exposure period under s727(3). The relief operates as an exemption from s727(3) for persons lodging such documents. Our relief does not alter the application of the exposure period to the disclosure document being supplemented or replaced.
- 77 Class Order [CO 00/843] *Options over listed securities: exposure period relief* provides exposure period relief for offers of options to acquire quoted securities under a disclosure document. We consider there is a sufficient connection between an option to acquire a quoted security and the quoted security itself to warrant the exposure period relief. Without this relief, an offer of options to acquire quoted securities would be subject to an exposure period.
- 78 Class Order [CO 02/145] *Relief from exposure period: managed investment products able to be traded on a licensed market* provides relief akin to [CO 00/168] for the broadly analogous provisions in Pt 7.9, relating to the application of the exposure period in circumstances where a PDS offers financial products that are in a class of managed investment products that are able to be traded on a financial market.

### Proposal

- c3 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Exposure Period) Instrument 2015/XX at Attachment 5 to this consultation paper. You can access the

current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/168\]](#), [\[CO 00/169\]](#), [\[CO 00/843\]](#) and [\[CO 02/145\]](#).

The only changes proposed are to:

- (a) consolidate this relief into one legislative instrument;
- (b) clarify the scope of the exemption in [CO 02/145] to provide that a class of managed investment products is not to be taken as being not able to be traded on a financial market merely because trading in that class of managed investment product has been suspended at the time the PDS offering the managed investment product is lodged;
- (c) update the name of the legislative instrument; and
- (d) reflect current drafting practice and update the format of the current document.

#### Your feedback

C3Q1 Do you agree with our proposal to remake and consolidate [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145]? If not, why not?

## Rationale

- 79 We consider the policy underlying the relief in [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145] remains cogent and the relief is operating efficiently and effectively.
- 80 We consider our clarification to the scope of the relief offered in [CO 02/145] ensures that our exposure period relief applies consistently across Ch 6D and Ch 7 when the securities or managed investment products are suspended at the time the relevant disclosure document or PDS is lodged.

## Relief for interest rate and term information in debenture prospectuses

### Background

- 81 Class Order [CO 00/173] *Debenture prospectuses: Incorporation of information on application forms* and Class Order [CO 00/174] *Debenture prospectuses: updating of interest rate and term information* provide relief to continuous debenture issuers to allow the interest rate and term of the debentures being offered to be included in the application form, or for the application form to be blank for interest rate and term information.

### Proposal

- C4 To preserve their effect beyond their respective sunset dates, we propose to continue the relief currently given by [CO 00/173] and

[CO 00/174] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Debenture Prospectuses) Instrument 2015/XX at Attachment 6 to this consultation paper. You can access the current instruments on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/173\]](#) or [\[CO 00/174\]](#).

The only changes proposed are to:

- (a) consolidate this relief into one legislative instrument
- (b) update the name of the legislative instrument; and
- (c) reflect current drafting practice and update the format of the current document.

#### *Your feedback*

C4Q1 Do you agree with our proposal to remake [CO 00/173] and [CO 00/174]? If not, why not?

### **Rationale**

- 82 This relief is based on the fact that it is not practical for continuous debenture issuers to prepare and lodge a supplementary or replacement prospectus every time they change the interest rate or term of the debenture being offered. We consider that these class orders are operating efficiently and effectively and are relied on by continuous debenture issuers.
- 83 For brevity, the new legislative instrument combines the relief offered by [CO 00/173] and [CO 00/174] into one legislative instrument.

## **Relief relating to financial statements included in an offer information statement**

### **Background**

- 84 Class Order [CO 00/172] *Offer information statements: relief in relation to financial statements* provides minor and technical relief from the operation of s715(2)(a) for issuers of offer information statements, to allow for the financial report included in the offer information statement to be for a 12-month period that is longer or shorter than 12 months by seven days. This relief provides consistency between the offer information statement provisions and s323D(2).
- 85 When [CO 00/172] was first issued, the drafting of the accounting standards applying at the time required an issuer to provide—with the 12-month financial report included in the offer information statement—comparative financial information. The period for the comparative financial information comprised a 12-month period ending at the end of the relevant issuer's last financial year that ended before the commencement of the 12-month period

the subject of the financial report, rather than a comparative period directly matching the period covered by the 12-month financial report. The second exemption in [CO 00/172] provided an exemption from the requirement to comply with the accounting standards in this instance, subject to the condition that an issuer provided comparative financial information for the 12-month period ending on the day immediately before the first day of the 12-month period the subject of the financial report.

## Proposal

**c5** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given in [CO 00/172] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Offer Information Statements) Instrument 2015/XX at Attachment 7 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/172\]](#).

The only changes proposed are to:

- (a) remove the second exemption in [CO 00/172], which provided a conditional exemption from s715(2)(b);
- (b) update the name of the legislative instrument; and
- (c) reflect current drafting practice and update the format of the current document.

### *Your feedback*

C5Q1 Do you agree with our proposal to remake [CO 00/172], including our proposal to omit the second exemption? If not, why not

## Rationale

86 We consider that the first exemption operates efficiently and effectively and should be remade.

87 The relevant accounting standards have changed since [CO 00/172] was issued. Australian Accounting Standard AASB 101 *Presentation of financial statements* now requires the comparative financial information to cover the 12-month period ending the day before the 12-month period the subject of the financial report included in the offer information statement in accordance with s715(2)(a). Consequently, the second exemption to [CO 00/172] is no longer required.

## Application form relief for bonus issue of options

### Background

- 88 Class Order [CO 00/1092] *Application form relief for bonus issues of options* addresses discrete minor and technical issues arising in relation to the operation of a certain procedural element of Ch 6D in circumstances where a particular form of offer is made: a pro-rata bonus issue of options to existing members of a company for nil consideration. The relief afforded by this class order reduces regulatory burden and facilitates this type of offer being made in circumstances where the procedural requirements of Ch 6D may otherwise preclude or significantly deter issuers from undertaking it.
- 89 Section 723 provides that securities may only be issued or transferred in response to an application form and in circumstances where the person issuing or transferring them has reasonable grounds to believe that the application form was included in, or accompanied by, the disclosure document (the application form requirement). The underlying policy of the application form requirement is simply to ensure that persons applying for securities under an offer have been provided with the disclosure document.
- 90 Under a pro-rata bonus issue of options to existing members of a company, the issuing company determines those persons to whom the options are to be issued on the basis of the composition of the company's register of members at the record date specified in the offer. Those members are issued the bonus options—for which no consideration is payable—by virtue of and in proportion to their shareholding in the company, rather than on the basis of a completed application form.

### Proposal

- c6** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 00/1092] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Options—Bonus Issues) Instrument 2015/XX at Attachment 8 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/1092\]](#).

The only changes proposed are to:

- (a) remove the exemption from s717, because it is unnecessary;
- (b) make an additional and very minor consequential conditional exemption from s734(2), necessitated by the exemption from the application form requirement in s723(1);
- (c) expand the scope of the instrument so that it applies to all bodies rather than just bodies whose securities are quoted on ASX;
- (d) update the name of the legislative instrument; and

- (e) reflect current drafting practice and update the format of the current document.

*Your feedback*

- C6Q1 Do you agree with our proposal to remake [CO 00/1092]? If not, why not?
- C6Q2 Do you agree with our proposal to expand the operation of this relief to all bodies rather than just bodies whose securities are quoted on ASX?

**Rationale**

- 91 We consider the policy underlying this relief remains valid and continues to be relied on by bodies seeking to undertake pro-rata bonus issues of options to existing members for nil consideration.

**Consequential conditional exemption from s734(2)**

- 92 [CO 00/1092] provides an exemption from the requirement to provide an application form to persons to whom the pro-rata bonus issue of options is made. Issuers relying on it will not be able to comply with the s734(5) and s734(6) general exceptions to the advertising prohibition in s734(2) because those exceptions require explicit statements to be made in relation to application forms.

- 93 Accordingly, we have proposed to issue an exemption from s734(2) subject to conditions. Those conditions operate to recreate the requirements in s734(5) and 734(6) but for the references to application forms.

**Expanding the relief to all bodies**

- 94 We consider that the underlying principles supporting this relief apply equally to all bodies, not just bodies whose securities are quoted on ASX. We have therefore proposed to expand the relief to all bodies.

**Relief facilitating substitution or consolidation of supplementary disclosure documents**

**Background**

- 95 Class Order [CO 00/190] *Substituting and consolidating supplementary disclosure documents* provides minor and technical relief to address the practical ramifications arising from the operation of s719(2)(d) when multiple supplementary disclosure documents are lodged.

96 The relief enables an issuer to provide investors with the original disclosure document and the most recent supplementary disclosure document, provided the most recent supplementary discloses all of the substantive information contained in the supplementary disclosure documents preceding it. Effectively, the relief facilitates a consolidated supplementary disclosure document regime (which our draft legislative instrument refers to as a ‘substituted supplementary document’).

### Proposal

**c7** To preserve its effect beyond its sunset date, we propose to continue the relief currently given by [CO 00/190] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2015/XX at Attachment 9 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/190\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument; and
- (b) reflect current drafting practice and update the format of the current document.

#### *Your feedback*

C7Q1 Do you agree with our proposal to reissue [CO 00/190]? If not, why not?

### Rationale

97 The main driver of the relief is to avoid a situation where an issuer’s disclosure document is comprised of the original in addition to multiple supplementary documents. This is an outcome not wholly consistent with the principle of clear, concise and effective disclosure. We consider the relief promotes investor protections and simplifies the process of preparing and issuing multiple disclosure documents for issuers.

98 We consider that our current relief operates effectively and efficiently and continues to be relied on by issuers in circumstances where multiple supplementary disclosure documents are lodged.

## Relief relating to advertising, market research and roadshow presentations

### Background

- 99 Class Order [CO 00/175] *Pre-prospectus roadshow presentations*, Class Order [CO 00/176] *Pre-prospectus market research*, Class Order [CO 00/656] *Announcement to securities exchanges about offers by subsidiaries of the listed body*, Class Order [CO 02/138] *Announcements to financial markets by holding companies about financial products other than securities* and Class Order [CO 02/143] *Financial product market research* all contain exceptions to the general prohibition on advertising or publicity for offers of securities that need a disclosure document.
- 100 Under [CO 00/175], [CO 00/176] and [CO 02/143], issuers may undertake roadshow presentations and market research before lodgement of a disclosure, subject to conditions. Our relief under [CO 00/656] and [CO 02/138] provides that where the subsidiary or proposed subsidiary of a listed body is making an offer, the listed body may make certain announcements to the market operator ahead of a disclosure document being lodged.

### Proposal

- c8** To preserve their effect beyond their respective sunset dates, we propose to continue the relief currently given by [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX at Attachment 10 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct links: [\[CO 00/175\]](#), [\[CO 00/176\]](#), [\[CO 00/656\]](#), [\[CO 02/138\]](#) and [\[CO 02/143\]](#).

The only changes proposed are to:

- (a) consolidate the relief provided by [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143] into one legislative instrument;
- (b) expand the relief to apply to financial products listed or seeking to be listed on a prescribed financial market (instead of just ASX);
- (c) expand the definition of 'advertising' in Ch 6D to include statements made or published via electronic services (including services provided through the internet);
- (d) update the name of the legislative instrument; and
- (e) reflect current drafting practice and update the format of the current document.



*Your feedback*

- C8Q1 Do you agree with our proposal to consolidate and reissue the relief in each of [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143]? If not, why not?
- C8Q2 Do you agree that we should expand this relief to apply to financial products listed on any prescribed financial market?
- C8Q3 Do you have any comment on our proposal to expand the scope of s734(7)(d) and s734(8) to extend to electronic media?

**Rationale**

- 101 We consider that, generally, our current relief is operating efficiently and effectively; however, we have proposed several minor and technical amendments, the rationales for which are outlined below.

**Extending relief to issuers listed on a ‘prescribed financial market’**

- 102 We have proposed to expand the relief to apply to issuers listed on a prescribed financial market, as defined by reg 1.0.02A of the Corporations Regulations 2001. Currently, [CO 00/175], [CO 00/176] and [CO 02/143] are restricted to issuers listed on ASX.
- 103 We consider that opening up the relief to all prescribed financial markets does not impede investor protections and facilitates issuers listed on exchanges other than ASX.

**Extending definition of media to include electronic media**

- 104 In relation to the prohibition in s734(2), we have also proposed to expand the scope of s734(7)(d) and s734(8) to include statements made or published via electronic services (including services provided through the internet).
- 105 We consider that this expanded definition will ensure consistent treatment of the advertising and publicity exceptions across both Chs 6D and 7 (we note that the analogous Ch 7 provisions already extend to electronic media: s1018A(6)).

**Disclosure for on-sale of securities and other financial products****Background**

- 106 Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products* provides on-sale relief for securities and financial products that were issued without disclosure in reliance on a number of

specific exceptions in s708 or 1012D, and in reliance on relief available in similar circumstances to those exceptions, and extends the use of cleansing notices under s708A(5) and 1012DA(5) to stapled securities.

107 Broadly, offers for issue require disclosure to address the imbalance of information between issuers and investors, unless they meet one of the exceptions in s708 (offers that do not need disclosure). While the exceptions are varied, the underlying policy is that certain persons do not need, or certain circumstances do not require, the protection provided by disclosure.

108 To prevent abuse of these exceptions, anti-avoidance provisions are contained in s707 (sale offers that require disclosure). For the purposes of [CO 04/671], where an issue of securities is made without disclosure *and* where either the issuer or the acquirer intended that they be resold, an offer for sale of those securities in the following 12 months requires disclosure.

109 [CO 04/671] provides relief from these on-sale provisions where they present practical difficulties for fundraising, and where providing relief does not compromise investor protection.

## Proposal

**c9** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 04/671] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX at Attachment 11 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 04/671\]](#).

The only changes proposed are to:

- (a) update legislative references, and remove outdated references to repealed ASIC class orders;
- (b) remove transitional provisions that are now of limited application;
- (c) revise the 'issuer purpose' test to clarify its application;
- (d) update the name of the legislative instrument; and
- (e) reflect current drafting practice and update the format of the current document.

### Feedback

c9Q1 Do you agree with our proposal to remake [CO 04/671]? If not, why not?

## Rationale

110 [CO 04/671] operates to provide on-sale relief by, where the initial offer of securities falls within one of the specified categories:

- (a) modifying s707(3) to remove the 'acquirer purpose'; and

- (b) modifying s707(4) to clarify the deeming provision that applies to the ‘issuer purpose’ (so that the issuer is taken to have issued the securities for the proscribed on-sale purpose where any of the securities are subsequently sold or offered for sale within 12 months after their issue).

111 We have received feedback stating that, on one reading of the modified deeming provision that applies to the ‘issuer purpose’ test, it is unclear why it will *not* be satisfied in almost all cases. Such a reading would indeed frustrate the purpose of the relief, and so we have proposed to revise the drafting.

112 We consider this revision addresses any ambiguity about how the relief is intended to operate without altering the circumstances in which it is available.

## Relief for sale offers within 12 months after controller sales

### Background

113 Class Order [CO 08/25] *Sale offers within 12 months after controller sales* is intended to ensure the effective operation of the exemptions under s708A and 1012DA for sale offers made within 12 months of a controller sale.

114 Section 708A allows some sale offers to be made without disclosure. Its scope was extended by the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* to cover certain sale offers made within 12 months after a controller sale.

115 The exemption applying to sale offers made within 12 months after a controller sale has various conditions that relate to the issue of the relevant securities. The nature of these conditions means that it is more appropriate to apply them with reference to the controller sale than the issue of the securities.

116 For example, the conditions require a cleansing notice to be given to the relevant market operator within five business days after the issue of the securities. However, the securities may have been issued a number of years before the controller sale and before the relevant company was listed or a controller sale contemplated. The condition operates more effectively if the notice must be given within five business days after the controller sale, since the 12 month period during which the exemption may be relied on commences at the time of the controller sale rather than the time the securities were issued.

117 Another example is that both the body whose securities are being sold and the controller are responsible for giving the cleansing notice to the relevant

market operator, but only the body is liable for a defective notice. The condition operates more effectively if both the body and the controller may be liable for the defective notice.

118 The effect of the class order is that various conditions of the exemption under s708A for sale offers of securities made within 12 months of a controller sale relate to the controller sale rather than the issue of the securities. Similar amendments are made to the corresponding exemption for sale offers of financial products under s1012DA.

119 The class order also makes technical amendments to s707(5) and 1012C(9)(b) to clarify, and give effect to, the intended operation of those provisions.

### Proposal

**c10** To preserve its effect beyond its sunset date, we propose to continue the relief currently given by [CO 08/25] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Sale Offers by Controllers) Instrument 2015/XX at Attachment 12 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 08/25\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument; and
- (b) reflect current drafting practice and update the format of the current document.

#### Feedback

c10Q1 Do you agree with our proposal to remake [CO 08/25]? If not, why not?

### Rationale

120 We consider that, generally, [CO 08/25] is operating efficiently and effectively and have therefore proposed to remake the relief with no significant changes.

## On-sale relief for convertible notes issued to wholesale investors

### Background

121 Class Order [CO 10/322] *On-sale for convertible notes issued to wholesale investors* provides relief from the on-sale provisions of the Corporations Act so that the quoted securities underlying convertible notes can be on-sold without a prospectus if a cleansing notice containing prospectus-like

disclosure is provided to the relevant market operator at the time the convertible notes are issued.

122 The relief makes it easier for entities to issue convertible notes to wholesale investors (or in other circumstances that do not require prospectus disclosure) without undermining protection for retail investors. This is because:

- (a) no relief is provided for any issue or on-sale of convertible notes to retail investors—it is only the underlying quoted securities that may be on-sold to retail investors; and
- (b) the issuer is subject to continuous disclosure obligations and must provide prospectus-like disclosure at the time the convertible notes are issued, meaning that the market receives sufficient information about the issue of convertible notes and the underlying quoted securities.

123 The underlying securities issued on conversion may be continuously quoted securities that, without the relief, would require either prospectus disclosure under s713 or PDS disclosure under s1013FA.

## Proposal

**C11** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 10/322] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (On-sales of Convertible Notes) Instrument 2015/XX at Attachment 13 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 10/322\]](#).

The only changes proposed are to:

- (a) clarify that relief is available only where the issuer of the convertible notes is also the issuer of the securities or financial products to be issued on conversion of those convertible notes;
- (b) update the name of the legislative instrument; and
- (c) reflect current drafting practice and update the format of the current document.

### Feedback

C11Q1 Do you agree with our proposal to remake [CO 10/322]? If not, why not?

## Rationale

124 In response to queries from potential issuers regarding the scope of relief available, in remaking the class order we have clarified that relief is available only where the issuer of the convertible notes is also the issuer of the securities or financial products to be issued on conversion of those notes.

- 125 Our updated guidance clarifies that the relief provided by the instrument is also available where convertible notes are permissibly issued without disclosure under Pt 6D.2, and is not limited to issues to ‘wholesale investors’.

## Relief to enable offers of certain convertibles under s713

### Background

- 126 Class Order [CO 00/195] *Offer of convertible securities under s713* allows a body to use a transaction-specific prospectus under s713 when offering convertible notes and convertible preference shares on the conversion of which the holder will be issued continuously quoted securities.
- 127 A body cannot use a transaction-specific prospectus while a determination made by ASIC under s713(6) is in force in relation to the body.

### Proposal

**c12** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 00/195] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX at Attachment 14 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/195\]](#).

The only changes proposed are to:

- (a) clarify that relief applies only where the issuer of the convertible note or convertible preference share is also the issuer of the underlying security;
- (b) narrow the scope of relief so that it applies only to convertible notes or convertible preference shares that are convertible at the election of the holder;
- (c) change the exemption to a modification;
- (d) update the name of the legislative instrument; and
- (e) reflect current drafting practice and update the format of the current document.

#### Feedback

C12Q1 Do you agree with our proposal to continue our relief and remake [CO 00/195]?

C12Q2 Do you agree with our proposal to clarify that the issuer of the convertible must be the same as the issuer of underlying securities?

- C12Q3 Do you agree that we should only grant relief to permit transaction-specific disclosure for convertibles in limited cases?
- C12Q4 Do you agree that conversion at the option of the holder ensures a sufficient relationship between the convertible and underlying security so that the use of transaction-specific disclosure is appropriate? Are there other conversion scenarios where this sufficient relationship would also be present, and to which you consider we should extend our relief (e.g. should we extend our relief to 'converting securities', where conversion occurs automatically in accordance with the terms of the security)?
- C12Q5 Should any specific additional disclosure requirements apply when making an offer of convertibles using a transaction-specific prospectus? Are there any other conditions or requirements that you consider should apply to our modification?
- C12Q6 Do you consider past reliance on [CO 00/195] has, in any particular cases, resulted in investors being provided with less information (in the prospectus, and when read together with the issuer's continuous disclosure) than they require to make an informed investment decision?

## Rationale

- 128 We have proposed to update the relief to operate in addition to the legislative provisions for transaction-specific prospectuses by way of a modification to s713 and 9 in draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX.
- 129 In response to queries from potential issuers regarding the scope of relief available, in remaking [CO 00/195] we have proposed to clarify that relief is available only where the issuer of the convertible notes or convertible preference shares is also the issuer of the continuously quoted securities to be issued on conversion.
- 130 In addition, we are considering amending our existing relief so that it applies only to convertible notes or convertible preference shares that are convertible at the election of the holder. As we are proposing to provide new legislative instrument relief for offers of bank hybrids (see proposal B2), we expect only a small number of offers will be affected by this amendment.
- 131 Our relief to permit an offer of convertibles using a transaction-specific prospectus was originally granted on the basis that investors could obtain sufficient information under the continuous disclosure regime to make an informed decision about the nature and risks of the convertibles and underlying continuously quoted securities.

- 132 This basis for relief relied on the view that the disclosures required by investors for the convertibles were similar to those required for the underlying continuously quoted securities, apart from disclosures about the specific features of the convertible.
- 133 Over time, the terms of some convertibles have become increasingly complex. In particular, the circumstances in which they will convert have become increasingly remote or contingent. In these cases, the relationship between the convertibles and their underlying securities is less direct, and the existing disclosure relating to the underlying securities and the issuer to date under continuous disclosure is therefore of less use when considering an investment in the convertibles.
- 134 As set out in proposal C12, our proposed amendment will narrow our relief to cases where conversion is at the election of the holder. In such cases, we are satisfied that the similarity between the required disclosure for convertibles and the underlying securities (noted at paragraph 132) is indeed present, as the holder can determine if and when they begin to hold the underlying securities. The value of the convertible is therefore highly correlated with that of the underlying securities.
- 135 We consider that other conversion mechanisms may detract from the original policy underlying the relief, because an investor may not be able to obtain sufficient relevant information about a convertible from the continuous disclosure regime where conversion is connected to events outside of the investor's control. Where there are multiple or complex conversion mechanisms, we consider that full disclosure under s710 is appropriate.
- 136 Requiring that conversion be at the option of the holder is also consistent with the definition of 'convertible securities' in the Corporations Act.

## Disclosure relief for rights issues

### Background

- 137 Class Order [CO 08/35] *Disclosure relief for rights issues* provides disclosure relief for certain non-traditional rights issues that cannot rely on the existing disclosure exemption for rights issues because they do not comply with all of the technical requirements in s9A and 708AA or 1012DAA.
- 138 A rights issue is made on a pro rata basis—that is, an entity offers existing holders the opportunity to subscribe for new securities or interests in proportion to their holding of securities or interests in that class. In a traditional rights issue, the terms of the offer are the same for each holder, including the timing of the offers.



- 139 A disclosure exemption exists to encourage listed entities to make greater use of rights issues because they give existing members an equal opportunity to acquire new securities or interests at the same offer price and in proportion to their holdings (the ‘equal opportunity principle’).
- 140 Rights issues are also one of the few forms of fundraising that allow retail investors to acquire securities or interests at a discount to the market price. The disclosure exemption is intended to facilitate retail investors’ access to a discounted form of fundraising, while ensuring they have adequate information about the securities or interests being offered.
- 141 However, to come within the disclosure exemption for rights issues, the offer must meet the definition of a rights issue in s9A and comply with the requirements in s708AA or 1012DAA.
- 142 Various rights issue structures have developed to meet different fundraising needs—in particular, ‘accelerated rights issues’, where offers to institutional holders are accelerated to enable the issuer to raise funds more quickly. Without relief, these structures do not fall within the definition of a rights issue, or do not comply with the requirements in s708AA or 1012DAA, and therefore cannot rely on the disclosure exemption. These offers would require a prospectus or PDS and, in such cases, it is likely that issuers will raise funds by institutional placements and the purpose of the exemption will be undermined. Retail investors are generally not able to participate in placements.
- 143 As discussed in draft RG 189, the disclosure exemption as modified by [CO 08/35]:
- (a) extends to accelerated rights issues because relatively minor differences in the timing of the offer and allotment to institutional investors (and certain other ‘exempt investors’) are permitted;
  - (b) does not require multiple cleansing notices, unless the first notice needs updating or is defective;
  - (c) allows any shortfall to be offered to the original offerees; and
  - (d) allows a rights issue to be extended to convertible security holders where the terms of the convertible securities require.

### Proposal

**c13** To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 08/35] in a new legislative instrument that reflects current drafting practice, without only minor amendments to reflect new rights issue structures: see draft ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX at Attachment 15 to this consultation paper. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 08/35\]](#).

The only changes proposed are to:

- (a) extend the relief to rights issues conducted using a Pro-rata Accelerated Institutional Traditional (or Tradeable) Retail Entitlement Offer (PAITREO) structure;
- (b) update the name of the legislative instrument; and
- (c) reflect current drafting practice and update the format of the current document.

#### *Feedback*

C13Q1 Do you agree with our proposal to remake [CO 08/35]? If not, why not?

C13Q2 Do you agree with our proposal to extend the relief to rights issues conducted using a PAITREO structure?

### **Rationale**

- 144 We have proposed to make minor amendments to [CO 08/35] so that it extends to rights issues that use a PAITREO structure, and therefore remove the need for issuers to seek individual relief.
- 145 Since [CO 08/35] was made, rights issue structures have further developed—in particular, the PAITREO structure. The first offer using a PAITREO structure was made in 2011, and it has been used approximately a dozen times to the date of this consultation paper. We have routinely provided individual relief to permit the use of a PAITREO structure on the basis that the structure:
- (a) appears to facilitate and encourage retail participation, by giving retail investors the opportunity to realise the value of their renounceable rights at a time close to when the same opportunity is given to institutions; and
  - (b) does not appear to offend the policy and purpose underpinning the rights issue disclosure exemption.

## D Repealing Ch 6D class orders

### Key points

We are proposing to repeal the following class orders:

- Class Order [CO 00/167] *Relief from exposure period: profile statements*;
- Class Order [CO 00/177] *Fundraising exemption: NZ prospectuses*;
- Class Order [CO 00/222] *Employee share schemes—miscellaneous fundraising relief*;
- Class Order [CO 00/229] *Solicitors mortgage investment companies*; and
- Class Order [CO 00/238] *Dividend reinvestment plans*.

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.

We seek your feedback in relation to these proposed revocations.

### Your feedback

- 146 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 Order [CO 00/167] *Relief from exposure period: profile statements***

#### Background

- 147 [CO 00/167] operates to provide relief from the exposure period in s727(3) for profile statements lodged with ASIC. [CO 00/167] was executed at a point in time when we had approved the use of profile statements for certain offers.

#### Proposal

- D1 We propose to repeal [CO 00/167], which would otherwise sunset on 1 April 2017. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/167\]](#).

## Rationale

- 148 There is no current ASIC approval for the use of profile statements for any offer of securities for issue or sale. Accordingly, we have proposed to repeal [CO 00/167] on the basis that it is presently unnecessary. The position will be revisited should we approve the use of profile statements in the future.

## Class Order [CO 00/177] *Fundraising exemption: NZ prospectuses*

### Background

- 149 [CO 00/177] provides limited relief from the expiry date requirement under s711(6) for prospectuses lodged in New Zealand.
- 150 An issuer relying on [CO 00/177] would still need to lodge a prospectus and comply with Ch 6D.

### Proposal

- D2 We propose to repeal [CO 00/177], which would otherwise sunset on 1 April 2017. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/177\]](#).

### Rationale

- 151 We analysed the relief given by [CO 00/177] and have formed the preliminary view that it is of limited use. We consider that it is more appropriate for an issuer to apply for individual relief where it cannot meet the requirements of the trans-Tasman mutual recognition scheme contained in Ch 8, which allows a New Zealand issuer to offer securities (or interests in collective or managed investment schemes) in Australia and New Zealand using one disclosure document prepared under New Zealand regulations.

## Class Order [CO 00/222] *Employee share schemes: miscellaneous fundraising relief*

### Background

- 152 [CO 00/222] provides minor and technical relief from Pts 6D.2 and 6D.3 for issuers of securities under an employee share scheme who elect to make such offers of securities for issue under a disclosure document.

- 153 [CO 00/222] sets out four exemptions:
- (a) the first exemption enables a disclosure document for an offer of securities under an employee share scheme to comprise more than one document only;
  - (b) the second exemption enables issuers to prepare and use a personalised disclosure document for an offer to an employee. The disclosure document can include personal information about the employee and details of how the particular terms and conditions of the employee share scheme apply to the employee in the employee's particular circumstances; and
  - (c) the third and fourth exemptions provide exemptions from the securities hawking prohibition in s736 for certain conduct relating to the offer of employee share scheme securities under a disclosure document.

### Proposal

D3 We propose to repeal [CO 00/222], which would otherwise sunset on 1 October 2016. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/222\]](#).

### Rationale

- 154 We have proposed to repeal the four exemptions provided by [CO 00/222] for the following reasons:
- (a) *the first exemption*—We consider this relief is now unnecessary because the incorporation by reference regime enshrined in s712 facilitates this practice;
  - (b) *the second exemption*—Based on our observations, current market practice for issuers is to use personalised application forms or a personalised offer letter (both permitted under Ch 6D, provided the form or letter is accompanied by the disclosure document), rather than a personalised disclosure document. We consider this relief is rarely, if ever, relied on; and
  - (c) *the third and fourth exemptions*—The Corporations Act was amended in 2007 by inserting s736(2)(e), which operates to provide a statutory exemption to the s736 prohibition. Consequently, the third and fourth exemptions are redundant.

## Class Order [CO 00/229] *Solicitors mortgage investment companies*

- 155 [CO 00/229] exempts certain solicitors mortgage investment companies from compliance with the prospectus and debenture provisions of the

Corporations Act in relation to the offer of debentures for issue or sale, on certain conditions.

### Proposal

D4 We propose to repeal [CO 00/229], which would otherwise sunset on 1 October 2016. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/229\]](#).

### Rationale

156 We consider that [CO 00/229] is no longer necessary because the entities for which relief was contemplated no longer require relief. Those entities (formerly solicitors mortgage investment companies):

- (a) no longer exist;
- (b) have converted to debenture issuers regulated under Ch 2L of the Corporations Act; or
- (c) have converted to solicitors mortgage investment schemes (for which Class Order [02/238] *Solicitors mortgage investment schemes* provides relief).

157 In addition, the Law Institute of Victoria has confirmed that the Register of Solicitor Mortgage Investment Companies it maintains does not include any entities that are subject to ongoing supervision obligations.

## Class Order [CO 00/238] *Dividend reinvestment plans*

### Background

158 [CO 00/238] extends the s708(13) statutory exception (the dividend reinvestment plan exception) to the general requirement to lodge a disclosure document for an offer of securities for issue to ‘registrable Australian bodies’.

### Proposal

D5 We propose to repeal [CO 00/238], which would otherwise sunset on 1 October 2016. You can access the current instrument on [www.comlaw.gov.au](http://www.comlaw.gov.au) by clicking on the following direct link: [\[CO 00/238\]](#).

### Rationale

159 [CO 00/238] was executed to address a legislative anomaly at the time—s708(13) as drafted only extended to a narrower category of issuers being

companies issuing shares under a dividend reinvestment plan, rather than the broader category of ‘bodies’ to which the general requirement to lodge a disclosure document applies.

- 160 This legislative anomaly was addressed by way of an amendment under the *Financial Services Reform Act 2001*, which broadened the scope of the s708(13) dividend reinvestment plan exception to extend to all ‘bodies’.
- 161 Accordingly, we consider [CO 00/238] is no longer necessary and have proposed to revoke it.

## E Updating and consolidating guidance—New regulatory guide

### Key points

We have undertaken a review of certain of our Ch 6D regulatory guides as part of our review of sunseting Ch 6D class orders

We are proposing to update and consolidate seven of our existing Ch 6D regulatory guides into one new regulatory guide—draft RG 000.

We are proposing updates to our guidance on the minimum subscription and quotation conditions and the offer of certain convertible securities. We are also proposing to retain our current approach to administering the exposure period in s727(3) and the process for withdrawing a disclosure document.

We invite feedback on these proposals.

### Issue of new regulatory guide

#### Proposal

- E1 We propose to consolidate (and where appropriate, update) the following of our existing Ch 6D regulatory guides into one new regulatory guide:
- (a) RG 23 *Updating and correcting prospectuses and application forms*;
  - (b) RG 56 *Prospectuses*;
  - (c) RG 99 *Quotation of securities offered by prospectus*;
  - (d) RG 152 *Lodgement of disclosure documents*;
  - (e) RG 155 *Debenture prospectuses*;
  - (f) RG 157 *Financial reports for offer information statements*; and
  - (g) RG 158 *Advertising and publicity for offers of securities*.

See draft RG 000 at Attachment 16 to this consultation paper.

#### Your feedback

E1Q1 Do you have any general comments on our proposed consolidation of seven current regulatory guides into draft RG 000?

E1Q2 Do you have any specific comments on any of our existing policies that have been consolidated into draft RG 000?



## Rationale

- 162 Appendix 2 provides a summary of our policy consolidation, cross-referencing each part of the existing regulatory guides to its location in draft RG 000.
- 163 Draft RG 000 is for issuers and their advisers who are required to prepare and lodge a disclosure document under Ch 6D. It sets out our policy on the use of disclosure documents and the procedure for offering securities for issue or sale under a disclosure document.
- 164 The broad scope and procedural focus of draft RG 000 is intended to support our other guidance on specific fundraising topics, and assist readers in locating other guidance that may be relevant to their circumstances. In particular, this guide is intended to complement our guidance on prospectus content in draft RG 228.
- 165 Draft RG 000 also covers certain of our legislative instrument modifications to, and exemptions from, the provisions of Ch 6D and explains their underlying policy basis. It also outlines some of the circumstances in which we may exercise our statutory discretion to grant individual relief in relation to the provisions of Ch 6D.

## Our policy on minimum subscription and quotation conditions

### Proposal

- E2 We propose to update our policy on minimum subscription and quotation conditions: see Section I of draft RG 000 at Attachment 16 to this consultation paper.

#### *Your feedback*

- E2Q1 Do you have any comments on our updated guidance on minimum subscription and quotation conditions in draft RG 000?
- E2Q2 Is the guidance that we have given on what happens if the minimum subscription condition and/or quotation condition are not satisfied adequate and useful? If not, please explain why, giving examples.
- E3 We propose to give guidance that if the quotation condition applies to the offer of both primary securities and attaching securities (e.g. an offer of shares with attaching options), the issuer should deal with applications for all securities offered under the disclosure document in the same way: see draft RG 000.244–RG 000.246.

*Your feedback*

- E3Q1 Should an issuer be permitted to issue quoted shares and non-quoted free attaching options under a disclosure document that states or implies that both shares and attaching options will be quoted?
- E3Q2 Do you agree that an issuer should deal with applications for shares and attaching options offered under a disclosure document in the same way, if the quotation condition applies to both?

**Rationale**

166 We have updated our guidance on minimum subscription and quotation conditions. Our updated guidance, in Section I of draft RG 000, discusses our general approach to the minimum subscription and quotation conditions, our legislative instrument modifying the choices open to an issuer if a condition is not met, and the consequences of not meeting a condition. Where relevant, it reflects our existing policy in:

- (a) RG 99; and
- (b) Section H of RG 228.

167 Our draft guidance is focused on the policy proposition that if a disclosure document represents that the offered securities will be quoted on a prescribed financial market, or will not be issued unless a minimum subscription condition is met, when subscribers apply for securities they expect to get:

- (a) a marketable investment if and when the issue of securities goes ahead; and
- (b) either the securities or a return of their application money, within a reasonable period of time.

**Quotation of attaching securities**

168 Our draft regulatory guide includes further discussion of our approach to an offer of primary securities and attaching securities that are both subject to a quotation condition. In particular, it clarifies:

- (a) our view that a reasonable investor would consider the offers as a bundle or package and would have made an investment decision on that basis; and
- (b) that if the quotation condition is not met for the attaching securities:
  - (i) the attaching securities cannot be issued unquoted; and
  - (ii) issuers should follow the procedure in s724 for both the primary securities and the attaching securities.

- 169 This is because investors applying for primary securities and attaching securities that are both subject to a quotation condition expect to get quoted primary securities and quoted attaching securities. Our policy applies so that if the quotation condition cannot be met for one of the offers, the consequences apply to both offers. We find attempts to characterise the attaching securities as ‘free’ to be problematic, and therefore do not consider it appropriate for an issuer to purport to comply with s724 for the attaching security only by refunding ‘nil’ consideration.
- 170 Where primary securities are approved for quotation but attaching securities are not, our proposed guidance clarifies that issuers should, for both the primary securities and attaching securities offered under the disclosure document:
- (a) repay the money received from applicants for the primary securities and attaching securities; or
  - (b) if this option is available, give applicants a refresh document and one month to withdraw their application and be repaid.

## Our policy on exposure periods

### Proposal

- E4** We propose to retain and further clarify our guidance on how we exercise ASIC’s administrative powers to extend the exposure period applying to a disclosure document offering non-quoted securities. We propose to retain our guidance from RG 152.13 that, where we consider it appropriate to do so, we will extend the exposure period for a period of no less than seven days (unless we are extending the period because a national public holiday falls in the first seven days after lodgement of a disclosure document that is subject to the exposure period, in which case we will extend the period for the number of days there are holidays): see draft RG 000.160–RG 000.164 in Attachment 16 to this consultation paper.

#### *Feedback*

- E4Q1 Do you consider that we should extend an exposure period for a period of less than seven days? And if so, given the underlying policy of the exposure period, why?

- E5** We propose to clarify our guidance to make it clear that, once we have extended an exposure period, we will not subsequently revoke that extension.

#### *Feedback*

- E5Q1 Do you agree with our proposal to make it clear that, once we have extended an exposure period, we will not subsequently revoke that extension?

E5Q2 Do you consider that we should adopt a policy where, in certain circumstances, we revoke an extended exposure period? And if so, in what circumstances should we do so?

## Rationale

171 Under s727(3) ASIC has the power to extend the seven-day exposure period applying to a disclosure document under which non-quoted securities are offered. Our practical experience in exercising this administrative function—including our regular engagement with issuers and their advisers—has enabled us to identify certain discrete elements of our current policy that would benefit from further clarification, in order to promote commercial certainty regarding our processes and support the underlying policy of the exposure period requirement.

172 We consider that our existing policy (which we have proposed to retain and further clarify) is consistent with the policy underlying s727(3), as articulated at para 8.20 of the Explanatory Memorandum to the Corporate Law Economic Reform Program Bill 1998:

The 7 to 14 day period gives ASIC and the market an opportunity to consider the disclosure document before the commencement of subscriptions for the securities on offer. Where the disclosure document was defective, the market could draw it to the attention of ASIC or aggrieved parties could, if appropriate, seek injunctions preventing the fundraising.

## Length of period

173 We consider our approach in proposal E4—to retain our current practice of extending the exposure period for seven days—best promotes commercial certainty and consistency about the length of an extension and eliminates potential costs arising from—and uncertainty created by—the need for individual issuers to make submissions to us on the length of a particular extension.

## Revocation of extension

174 We do not favour adopting a practice where we revoke an extension to the exposure period in certain circumstances. We consider that a uniform approach to all extensions, when viewed holistically, will promote certainty for issuers, investors and the market for the following reasons:

- (a) issuers will have certainty about the periods that apply and will be able to set their offer timetable accordingly;
- (b) once an exposure period is extended, investors and the market more generally will have certainty about the length of that extension, without having to monitor whether the extension is subsequently revoked; and
- (c) it will give the market further time to consider the offer in light of any changes to the prospectus.

## Our policy on withdrawing an offer

### Proposal

**E6** We propose to provide guidance on how an issuer can withdraw an offer under a disclosure document. We consider offers can be withdrawn by changing the terms of the offer under a supplementary or replacement disclosure document. Where we consider that a disclosure document is defective, we may proceed to a final stop order on the document regardless of whether the issuer proposes to withdraw it or not: see draft RG 000.131–RG 000.133 in Attachment 16 to this consultation paper.

### *Your feedback*

**E6Q1** Do you have any comments on our proposed guidance on withdrawing an offer under a disclosure document, set out at draft RG 000.131–RG 000.133?

### Rationale

- 175 Issuers intending to make an offer of securities must lodge a disclosure document for the offer with ASIC: s727(1). While the Corporations Act does not specify how an offer can be withdrawn following lodgement of a disclosure document, it contemplates, through the process of issuing a supplementary or replacement document, that the terms of an offer of securities can be changed: see s719. We consider that this process can be used to withdraw an offer. This is consistent with our observations of market practice.
- 176 Where we consider that the disclosure document is defective, we may put the matter to a delegate, seeking a final stop order under s739(1A), even if the issuer has withdrawn or proposes to withdraw the offer. We consider this is appropriate in order to ensure there is no possible mechanism for securities to be issued under a defective disclosure document (as arguably a withdrawn offer can be reopened).

## Our guidance on the offer of certain convertibles under s713

### Proposal

- E7** We propose to update and reorganise our guidance on the use of a transaction-specific prospectus when offering certain convertibles (contained in current RG 66.17–RG 66.22) to:
- (a) reflect the proposed update to our relief in contained in proposal C12; and
  - (b) distinguish the scope of our remade relief in draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX from

new relief available for bank hybrids under draft ASIC Corporations (Regulatory Capital Securities) Instrument 2015/XX.

We also propose to move our policy on transaction-specific prospectuses in current RG 66 to draft RG 000 (where we think it more appropriately and logically fits). RG 66 will be updated to only set out our regulatory guidance on transaction-specific PDSs: see proposal F3.

Our updated guidance is set out in Section C of draft RG 000 in Attachment 16 to this consultation paper.

#### *Your feedback*

- E7Q1 Do you have any general comments on our proposed guidance on the use of a transaction-specific prospectus when offering certain convertible securities as set out in Section C of draft RG 000?
- E7Q2 Is there any element of the class of securities for which relief is given that is unclear or would benefit from additional or more detailed guidance?

### **Rationale**

- 177 Our relief to permit the use of a transaction-specific prospectus when offering certain convertible securities has existed since 1997. However, due to legislative changes introduced in 2000, there is some confusion about the scope of that relief.
- 178 We have proposed to revise our relief for offers of convertible notes or convertible preference shares to make it clear that our relief applies only:
- (a) where the issuer of the convertible securities is also the issuer of the underlying securities; and
  - (b) where conversion is at the election of the holder (see paragraphs 128–136).
- 179 Our updated guidance will also set out our relief for offers of bank hybrids—these issuers and instruments represent a special case where relief is considered appropriate in circumstances where draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX is not available.

## F Updating guidance—Current regulatory guides

### Key points

We have undertaken a review of certain of our Ch 6D regulatory guides as part of our review of sunseting Ch 6D class orders.

We are proposing to update our guidance in RG 173 to reflect the policy underlying our proposed new legislative instrument (see proposal B2) and to provide guidance currently in RG 213. We are proposing to revoke RG 213.

We are also proposing minor updates to RG 55, RG 66, RG 189 and RG 228, reflecting the policy in our draft legislative instruments and our broader policy reorganisation.

### Update to RG 173 and revocation of RG 213

#### Proposal

- F1 We propose to update RG 173 to consolidate:
- (a) our existing guidance found in that guide;
  - (b) our existing guidance from RG 213 regarding the on-sale of quoted securities that are issued on the conversion of convertible notes issued to wholesale investors or otherwise without prospectus disclosure; and
  - (c) proposed new guidance on disclosure and on-sale relief for bank hybrids.

See a marked-up version of draft RG 173 at Attachment 17 to this consultation paper.

#### Feedback

F1Q1 Do you have any comments on our draft update to RG 173?

- F2 We propose to revoke RG 213 when the updated RG 173 is released.

#### Feedback

F2Q1 Do you have any comments on our proposal to revoke RG 213?

#### Rationale

180 We have proposed to make minor updates to our existing guidance in RG 173 to reflect the terms of our remade relief in draft ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX.

181 We have proposed to include new guidance on the disclosure and on-sale relief for bank hybrids contained in draft ASIC Corporations (Regulatory

Capital Securities) Instrument 2015/XX, related guidance on the terms of our remade relief in draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX, and relocate and update our existing guidance from RG 213 on our remade relief in ASIC Corporations (On-sales of Convertible Notes) Instrument 2015/XX.

182 Following the repeal of [CO 10/321] in December 2014, the remaining guidance in RG 213 is redundant and we have therefore proposed to revoke that guide.

183 As further amendments to the simple corporate bonds regime (the introduction of which prompted the repeal of [CO 10/321]) are currently planned, we have not proposed to issue specific guidance on disclosure for corporate bonds as part of this consultation, but may do so at a later time.

## Updates to other existing Ch 6D regulatory guides

### Proposal

F3 We propose to update and reissue the following four regulatory guides to reflect changes arising from the relocation of guidance into draft RG 000 and the remaking of class orders referred to in the guides:

- (a) RG 55;
- (b) RG 66;
- (c) RG 189 and
- (d) RG 228.

The only other changes proposed are to reflect changes to related legislation since the guides were originally published and to reflect any other non-substantive changes required. There are no substantive changes to the policy underlying these regulatory guides:

See the marked-up versions of draft RG 55, RG 189 and RG 228 in Attachments 18, 20, and 21 respectively. The proposed changes to draft RG 66 are not marked up because we have reformatted this guide into our current template: see Attachment 19.

#### *Your feedback*

F3Q1 Do you have any comments on our draft updates to these four existing regulatory guides?

### Rationale

#### RG 55

184 We have proposed to make very minor updates to RG 55 to reflect the consolidation of our sunseting class orders. We have not proposed any



changes to the underlying policy because we consider it is still operating effectively.

**RG 66**

185 RG 66 was first issued in 1997 and was last updated in 2004.

186 Other than in relation to the use of a transaction-specific prospectus when offering certain convertible securities, we do not plan to make any substantive changes to our policy in RG 66 because we consider it is still operating effectively.

187 As noted in our rationale for proposalE7, we have proposed to move our policy on transaction-specific prospectuses into our new draft RG 000 (where we think it more appropriately and logically fits). RG 66 will be updated to set out our regulatory guidance on transaction-specific PDSs.

**RG 189**

188 We have proposed to make very minor updates to RG 189 to take account of the minor changes proposed to the relief in [CO 08/35]. See proposal C13 for these changes.

**RG 228**

189 We have proposed to move discrete sections of our RG 228 guidance into draft RG 000. We consider certain RG 228 guidance on short-form prospectuses and how we review disclosure documents will be more appropriately and logically located in draft RG 000.

## G Regulatory and financial impact

190 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) the promotion of the underlying Ch 6D policy of investor protection; and
- (b) providing, where possible, commercial certainty and reducing costs to business.

191 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

192 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

193 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 5.

## Appendix 1: Class orders to be remade and repealed

**Table 1: Class orders to be remade**

| Current class order  | Sunseting date | Proposed new legislative instrument   | Proposal |
|--|----------------|---|----------|
| [CO 00/168] <i>Relief from exposure period: quoted securities</i>  | 1 April 2017   | Draft ASIC Corporations (Exposure Period) Instrument 2015/XX                                | C3       |
| [CO 00/169] <i>Relief from exposure period: Supplementary and replacement prospectuses</i>               | 1 April 2017   | Draft ASIC Corporations (Exposure Period) Instrument 2015/XX                                | C3       |
| [CO 00/172] <i>Offer information statements: relief in relation to financial statements</i>              | 1 April 2017   | Draft ASIC Corporations (Offer Information Statements) Instrument 2015/XX                   | C5       |
| [CO 00/173] <i>Debenture prospectuses: Incorporation of information on application forms</i>             | 1 April 2017   | Draft ASIC Corporations (Debenture Prospectuses) Instrument 2015/XX                         | C4       |
| [CO 00/174] <i>Debenture prospectuses: updating of interest rate and term information</i>                | 1 April 2017   | Draft ASIC Corporations (Debenture Prospectuses) Instrument 2015/XX                         | C4       |
| [CO 00/175] <i>Pre-prospectus roadshow presentations</i>   | 1 October 2016 | Draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX                  | C8       |
| [CO 00/176] <i>Pre-prospectus market research</i>  | 1 October 2016 | Draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX                  | C8       |
| [CO 00/190] <i>Substituting and consolidating supplementary disclosure documents</i>                     | 1 April 2017   | Draft ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2015/XX | C7       |
| [CO 00/195] <i>Offer of convertible securities under s713</i>  | 1 April 2017   | Draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX                         | C12      |
| [CO 00/656] <i>Announcements to securities exchanges about offers by subsidiaries of the listed body</i> | 1 October 2016 | Draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX                  | C8       |
| [CO 00/843] <i>Options over listed securities: exposure period relief</i>                                | 1 October 2016 | Draft ASIC Corporations (Exposure Period) Instrument 2015/XX                                | C3       |
| [CO 00/1092] <i>Application form relief for bonus issues of options</i>                                  | 1 April 2017   | Draft ASIC Corporations (Option— Bonus Issues) Instrument 2015/XX                           | C6       |
| [CO 01/1455] <i>Continuously quoted securities</i>   | 1 April 2016   | Draft ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX                  | C2       |

| Current class order   | Sunseting date | Proposed new legislative instrument  | Proposal |
|---|----------------|--|----------|
| [CO 02/138] <i>Announcements to financial markets by holding companies about financial products other than securities</i>       | 1 April 2017   | Draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX           | C8       |
| [CO 02/141] <i>Experts: citing in Product Disclosure Statements</i>   | 1 April 2017   | Draft ASIC Corporations (Consents to Statements) Instrument 2015/XX                  | C1       |
| [CO 02/143] <i>Financial product market research</i>  | 1 April 2017   | Draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX           | C8       |
| [CO 02/145] <i>Relief from exposure period: managed investment products able to be traded on a licensed market</i>              | 1 April 2017   | Draft ASIC Corporations (Exposure Period) Instrument 2015/XX                         | C3       |
| [CO 04/671] <i>Disclosure for on-sale of securities and other financial products</i>  | 1 October 2016 | Draft ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX | C9       |
| [CO 04/672] <i>Extension of on-sales exemption</i>  | 1 April 2016   | Draft ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX           | C2       |
| [CO 07/428] <i>Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS</i> | 1 October 2017 | Draft ASIC Corporations (Consents to Statements) Instrument 2015/XX                  | C1       |
| [CO 07/429] <i>Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers</i>           | 1 October 2017 | Draft ASIC Corporations (Consents to Statements) Instrument 2015/XX                  | C1       |
| [CO 07/571] <i>Disclosure exemption for rights issues</i>   | 1 October 2017 | Draft ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX           | C2       |
| [CO 08/25] <i>Sale offers within 12 months after controller sales</i>   | 1 April 2018   | Draft ASIC Corporations (Sale Offers by Controllers) Instrument 2015/XX              | C10      |
| [CO 08/35] <i>Disclosure relief for rights issues</i>   | 1 October 2018 | Draft ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX           | C13      |
| [CO 10/322] <i>On-sale for convertible notes issued to wholesale investors</i>  | 1 October 2020 | Draft ASIC Corporations (On-sales of Convertible Notes) Instrument 2015/XX           | C11      |
| [CO 13/523] <i>Citation of experts and consent to quote</i>   | 1 October 2023 | Draft ASIC Corporations (Consents to Statements) Instrument 2015/XX                  | C1       |

**Table 2: Class orders to be repealed**

| <b>Current class order</b>   | <b>Sunsetting date</b> | <b>Proposal</b> |
|--|------------------------|-----------------|
| [CO 00/167] <i>Relief from exposure period: profile statements</i>         | 1 April 2017           | D1              |
| [CO 00/177] <i>Fundraising exemption: NZ prospectuses</i>                  | 1 April 2017           | D2              |
| [CO 00/222] <i>Employee share schemes—miscellaneous fundraising relief</i> | 1 October 2016         | D4              |
| [CO 00/229] <i>Solicitors mortgage investment companies</i>                | 1 October 2016         | D5              |
| [CO 00/238] <i>Dividend reinvestment plans</i>                             | 1 October 2016         | D5              |

## Appendix 2: Reconciliation of our regulatory guidance

194 Table 3 provides cross-references to those parts of our existing guidance that are incorporated into the various sections of draft RG 000.

**Table 3: Cross reference of draft new regulatory guidance to source in existing regulatory guidance**

| Section of draft RG 000 | Topic of guidance  | Current location        |
|-------------------------|--|-------------------------|
| Section A               | Why we have disclosure document  | New guidance            |
| Section A               | When a disclosure document is required                                 | New guidance            |
| Section A               | The various types of disclosure documents                              | New guidance            |
| Section A               | ASIC's role  | New guidance            |
| Section A               | Scope of this guide and summary of topics covered                      | New guidance            |
| Section A               | Other guidance issuers may need to consider                            | New guidance            |
| Section B               | Prospectuses   | New guidance            |
| Section B               | Short-form prospectuses  | RG 228 and new guidance |
| Section C               | Rationale for transaction-specific disclosure                          | RG 66                   |
| Section C               | When transaction-specific disclosure can be used                       | RG 66                   |
| Section C               | Effect of suspensions from quotation and trading halts                 | RG 66                   |
| Section C               | Content requirements for transaction-specific prospectus               | RG 66                   |
| Section C               | ASIC's exclusion powers—s713(6)  | RG 66                   |
| Section C               | Relief from enhanced disclosure provisions                             | RG 66                   |
| Section C               | Individual relief to use a transaction-specific prospectus             | RG 66                   |
| Section D               | Rationale for offer information statements                             | New guidance            |
| Section D               | Content requirements for offer information statements                  | RG 157                  |
| Section D               | Financial reports for offer information statements                     | RG 157                  |
| Section D               | Relief for financial reports prepared for offer information statements | RG 157                  |

| Section of draft RG 000 | Topic of guidance   | Current location        |
|-------------------------|---|-------------------------|
| Section E               | Profile statements  | New guidance            |
| Section E               | Two-part simple corporate bonds prospectus  | New guidance and RG 213 |
| Section F               | How to lodge a disclosure document  | New guidance            |
| Section F               | Our approach to withdrawing an offer under a disclosure document                                  | New guidance            |
| Section F               | Changes to disclosure documents following lodgement   | RG 23 and RG 152        |
| Section F               | Lodging electronic disclosure documents   | RG 107                  |
| Section F               | Application forms   | RG 56 and RG 152        |
| Section F               | Relief for application forms  | RG 56 and new guidance  |
| Section G               | Exposure period requirements  | RG 152                  |
| Section G               | Access to disclosure documents  | RG 152                  |
| Section G               | What we will do to facilitate access to disclosure documents                                      | RG 152                  |
| Section G               | Where we will extend the exposure period  | RG 152                  |
| Section G               | Relief from the exposure period   | RG 152                  |
| Section G               | Applications for securities during the exposure period  | RG 152                  |
| Section H               | When a supplementary or replacement disclosure document is required                               | RG 23 and new guidance  |
| Section H               | Form, content and procedure requirements  | RG 23 and new guidance  |
| Section H               | Consequences of lodging a supplementary or replacement disclosure document                        | New guidance            |
| Section H               | Relief to consolidate supplementary disclosure documents  | RG 23                   |
| Section I               | Quotation condition   | RG 99 and new guidance  |
| Section I               | Minimum subscription condition  | RG 228 and new guidance |
| Section I               | Relief for calculating time periods   | New guidance            |
| Section I               | Consequences of the minimum subscription condition and/or quotation condition not being satisfied | New guidance            |

| <b>Section of draft RG 000</b> | <b>Topic of guidance</b>                                    | <b>Current location</b>    |
|--------------------------------|---|----------------------------|
| Section I                      | Relief to provide refresh documents                         | New guidance               |
| Section J                      | General prohibition on advertising and publicity            | RG 158                     |
| Section J                      | Relief for advertising and publicity                        | RG 158                     |
| Section J                      | How we monitor compliance with the advertising prohibitions | RG 158                     |
| Section K                      | Debenture prospectuses                                      | RG 155                     |
| Section L                      | Pre-lodgement review of disclosure documents                | RG 152 and<br>RG 228       |
| Section L                      | Post-lodgement review of disclosure documents               | RG 152 and new<br>guidance |
| Section L                      | What we look for when reviewing a disclosure document       | RG 228                     |
| Section L                      | What we do when there are disclosure concerns               | RG 228                     |



## Key terms

| Term                              | Meaning in this document   |
|-----------------------------------|--|
| ASIC                              | Australian Securities and Investments Commission   |
| ASX                               | The exchange market known as ASX, operated by ASX Limited  |
| bank hybrid                       | Regulatory capital instruments issued by banks and other prudentially regulated bodies   |
| Ch 6D (for example)               | A chapter of the Corporations Act (in this example numbered 6D)  |
| cleansing notice                  | A notice to the relevant market operator under s708AA or 708A of the Corporations Act  |
| Corporations Act                  | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act   |
| [CO 07/428] (for example)         | An ASIC class order (in this example numbered 07/428)<br>Note: Legislative instruments made from 2015 are referred to as ASIC instruments.   |
| continuous disclosure obligations | The continuous disclosure provisions in s674 and 675 of the Corporations Act   |
| continuously quoted securities    | As defined in s9 of the Corporations Act   |
| disclosure document               | For an offer of securities, this includes a prospectus, a profile statement and an offer information statement.  |
| draft RG 000                      | Draft Regulatory Guide 000 <i>Offering securities under a disclosure document</i>  |
| exposure period                   | The period of time after lodgement of a disclosure document in which the offeror must not accept an application for, or issue or transfer, non-quoted securities under the disclosure document |
| individual relief                 | Relief given by ASIC to individual parties on application  |
| Legislative Instruments Act       | <i>Legislative Instruments Act 2003</i>  |
| offer information statement       | A disclosure document that complies with the disclosure requirements in s715 of the Corporations Act   |
| PAITREO                           | Pro-rata Accelerated Institutional Traditional (or Tradeable) Retail Entitlement Offer   |
| PDS                               | Product Disclosure Statement   |

| Term                               | Meaning in this document  |
|------------------------------------|---|
| Product Disclosure Statement (PDS) | 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<br>Note: See s761A for the exact definition. |
| profile statement                  | A disclosure document that complies with the disclosure requirements in s721 of the Corporations Act  |
| Pt 6D.2 (for example)              | A part of the Corporations Act (in this example numbered 6D.2)  |
| refresh document                   | A supplementary or replacement disclosure document under s724(3F)(a) that refreshes the time periods of minimum subscription or quotation conditions for an offer   |
| RG 66 (for example)                | An ASIC regulatory guide (in this example numbered 66)  |
| RIS                                | Regulation Impact Statement   |
| s723 (for example)                 | A section of the Corporations Act (in this example numbered 723), unless otherwise specified  |
| short-form prospectus              | A prospectus that complies with the disclosure requirements in s712 of the Corporations Act   |
| sunsetting                         | The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect   |
| transaction-specific prospectus    | A prospectus that complies with the disclosure requirements in s713 of the Corporations Act   |

## List of proposals and questions

| Proposal   | Your feedback  |
|--|--|
| <p>B1 We propose to make a new legislative instrument that modifies s723 and 724 to:</p> <ul style="list-style-type: none"> <li>(a) ensure that the minimum subscription and quotation condition time periods applying to all applicants under an offer are synchronised and operate consistently;</li> <li>(b) streamline the process for an issuer to extend the time period for satisfaction of the minimum subscription and quotation conditions by: <ul style="list-style-type: none"> <li>(i) introducing the concept of a 'refresh document', a supplementary or replacement disclosure document under s724(3F)(a) that refreshes the time periods of minimum subscription or quotation conditions for an offer; and</li> <li>(ii) setting out prescribed information and statements to be included in that refresh document; and</li> </ul> </li> <li>(c) clarify that an issuer must repay the money received from applications if the minimum subscription or quotation time periods expire before those conditions are met.</li> </ul> <p>See draft ASIC Corporations (Minimum Subscription and Quotation Condition) Instrument 2015/XX in Attachment 1 to this consultation paper.</p> | <p>B1Q1 Do you agree with our proposal to make a legislative instrument to synchronise the relevant time periods for all applicants under an offer? If not, why not?</p> <p>B1Q2 Do you agree with our proposal to introduce a process for extending the minimum subscription condition and quotation condition time periods? If not, why not?</p> <p>B1Q3 Do you agree with our proposal to require prescribed information and statements to be used to activate a refresh document? If not, why not?</p> <p>B1Q4 Are there any other conditions or requirements that should apply to our modification?</p> |
| <p>B2 We propose to make a new legislative instrument to provide disclosure and on-sale relief for bank hybrids, together with the ordinary shares issued on conversion of such instruments: see draft ASIC Corporations (Regulatory Capital Securities) Instrument 2015/XX in Attachment 2 to this consultation paper. This draft instrument will allow retail offers to be made under a transaction-specific prospectus, and be a substitute for individual instruments of relief (based on the relief in [CO 00/195], [CO 04/671] and [CO 10/322]) we routinely provide in connection with offers of bank hybrids to retail and wholesale investors.</p>  | <p>B2Q1 Do you have any comments on our proposal to provide disclosure and on-sale relief for offers of bank hybrids?</p>  |

| Proposal  | Your feedback  |
|---|--|
| <p>C1 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Consents to Statements) Instrument 2015/XX at Attachment 3 to this consultation paper. You can access the current instruments on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct links: [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) combine [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523] into one instrument;</li> <li>(b) update the list of approved foreign markets from which trading data can be referenced;</li> <li>(c) remove s1013K(1B)(d)(v), as notionally inserted by [CO 07/428], from the proposed new legislative instrument;</li> <li>(d) update the name of the legislative instrument; and</li> <li>(e) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C1Q1 Do you agree with our proposal to reissue and consolidate [CO 02/141], [CO 07/428], [CO 07/429] and [CO 13/523]? If not, why not?</p> <p>C1Q2 Do you agree with the minor change we have proposed in relation to the notionally inserted s1013K(1B)(d)(v)?</p> |

| Proposal  | Your feedback   |
|---|---|
| <p>C2 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 01/1455], [CO 04/672] and [CO 07/571] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Disregarding Technical Relief) Instrument 2015/XX at Attachment 4 to this consultation paper. You can access the current instruments on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct links: [CO 01/1455], [CO 04/672] and [CO 07/571].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) combine [CO 01/1455], [CO 04/672] and [CO 07/571] into one instrument, modifying s9, Ch 6D and Pt 7.9 to disregard technical relief instruments;</li> <li>(b) where an entity would otherwise be ineligible (because it is covered by individual relief made under s340 that relieves the entity, or any person as director or auditor of the entity, from the requirements of s323D(3)) extend the relief to permit the entity: <ul style="list-style-type: none"> <li>(i) to use transaction-specific disclosures under s713 and 1013FA;</li> <li>(ii) to rely on the cleansing notice exemption under s708A and 1012DA; and</li> <li>(iii) to make a rights issue of quoted securities and quoted financial products without a disclosure document or PDS under s708AA and 1012DAA;</li> </ul> </li> <li>(c) update the name of the legislative instrument; and</li> <li>(d) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C2Q1 Do you agree with our proposal to remake and consolidate [CO 01/1455], [CO 04/672] and [CO 07/571]? If not, why not?</p> <p>C2Q2 Do you agree with our proposal to extend the scope of the relief to make it available to entities subject to individual ASIC relief from s323D(3)?</p> |

| Proposal  | Your feedback  |
|---|--|
| <p>C3 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Exposure Period) Instrument 2015/XX at Attachment 5 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) consolidate this relief into one legislative instrument;</li> <li>(b) clarify the scope of the exemption in [CO 02/145] to provide that a class of managed investment products is not to be taken as being not able to be traded on a financial market merely because trading in that class of managed investment product has been suspended at the time the PDS offering the managed investment product is lodged;</li> <li>(c) update the name of the legislative instrument; and</li> <li>(d) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C3Q1 Do you agree with our proposal to remake and consolidate [CO 00/168], [CO 00/169], [CO 00/843] and [CO 02/145]? If not, why not?</p> |
| <p>C4 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 00/173] and [CO 00/174] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Debenture Prospectuses) Instrument 2015/XX at Attachment 6 to this consultation paper. You can access the current instruments on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/173] or [CO 00/174].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) consolidate this relief into one legislative instrument</li> <li>(b) update the name of the legislative instrument; and</li> <li>(c) reflect current drafting practice and update the format of the current document.</li> </ul>   | <p>C4Q1 Do you agree with our proposal to remake [CO 00/173] and [CO 00/174]? If not, why not?</p>   |

| Proposal   | Your feedback   |
|--|---|
| <p>C5 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given in [CO 00/172] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Offer Information Statements) Instrument 2015/XX at Attachment 7 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/172].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) remove the second exemption in [CO 00/172], which provided a conditional exemption from s715(2)(b);</li> <li>(b) update the name of the legislative instrument; and</li> <li>(c) reflect current drafting practice and update the format of the current document.</li> </ul>  | <p>C5Q1 Do you agree with our proposal to remake [CO 00/172], including our proposal to omit the second exemption? If not, why not</p>  |
| <p>C6 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 00/1092] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Options—Bonus Issues) Instrument 2015/XX at Attachment 8 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/1092].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) remove the exemption from s717, because it is unnecessary;</li> <li>(b) make an additional and very minor consequential conditional exemption from s734(2), necessitated by the exemption from the application form requirement in s723(1);</li> <li>(c) expand the scope of the instrument so that it applies to all bodies rather than just bodies whose securities are quoted on ASX;</li> <li>(d) update the name of the legislative instrument; and</li> <li>(e) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C6Q1 Do you agree with our proposal to remake [CO 00/1092]? If not, why not?</p> <p>C6Q2 Do you agree with our proposal to expand the operation of this relief to all bodies rather than just bodies whose securities are quoted on ASX?</p> |

| Proposal  | Your feedback  |
|---|--|
| <p>C7 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 00/190] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Substituted Supplementary Disclosure Documents) Instrument 2015/XX at Attachment 9 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/190].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument; and</li> <li>(b) reflect current drafting practice and update the format of the current document.</li> </ul>   | <p>C7Q1 Do you agree with our proposal to reissue [CO 00/190]? If not, why not?</p>  |
| <p>C8 To preserve their effect beyond their respective sunseting dates, we propose to continue the relief currently given by [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Market Research and Roadshows) Instrument 2015/XX at Attachment 10 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct links: [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) consolidate the relief provided by [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143] into one legislative instrument;</li> <li>(b) expand the relief to apply to financial products listed or seeking to be listed on a prescribed financial market (instead of just ASX);</li> <li>(c) expand the definition of 'advertising' in Ch 6D to include statements made or published via electronic services (including services provided through the internet);</li> <li>(d) update the name of the legislative instrument; and</li> <li>(e) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C8Q1 Do you agree with our proposal to consolidate and reissue the relief in each of [CO 00/175], [CO 00/176], [CO 00/656], [CO 02/138] and [CO 02/143]? If not, why not?</p> <p>C8Q2 Do you agree that we should expand this relief to apply to financial products listed on any prescribed financial market?</p> <p>C8Q3 Do you have any comment on our proposal to expand the scope of s734(7)(d) and s734(8) to extend to electronic media?</p> |



| Proposal  | Your feedback  |
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| <p>C9 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 04/671] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Sale Offers That Do Not Need Disclosure) Instrument 2015/XX at Attachment 11 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 04/671].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update legislative references, and remove outdated references to repealed ASIC class orders;</li> <li>(b) remove transitional provisions that are now of limited application;</li> <li>(c) revise the 'issuer purpose' test to clarify its application;</li> <li>(d) update the name of the legislative instrument; and</li> <li>(e) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C9Q1 Do you agree with our proposal to remake [CO 04/671]? If not, why not?</p> |
| <p>C10 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 08/25] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Sale Offers by Controllers) Instrument 2015/XX at Attachment 12 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 08/25].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) update the name of the legislative instrument; and</li> <li>(b) reflect current drafting practice and update the format of the current document.</li> </ul>   | <p>C10Q1 Do you agree with our proposal to remake [CO 08/25]? If not, why not?</p> |

| Proposal   | Your feedback   |
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| <p>C11 To preserve its effect beyond its sunseting date, we propose to continue the relief currently given by [CO 10/322] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (On-sales of Convertible Notes) Instrument 2015/XX at Attachment 13 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 10/322].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) clarify that relief is available only where the issuer of the convertible notes is also the issuer of the securities or financial products to be issued on conversion of those convertible notes;</li> <li>(b) update the name of the legislative instrument; and</li> <li>(c) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C11Q1 Do you agree with our proposal to remake [CO 10/322]? If not, why not?</p> |

| Proposal   | Your feedback   |
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| <p>C12 To preserve its effect beyond its sunset date, we propose to continue the relief currently given by [CO 00/195] in a new legislative instrument that reflects current drafting practice: see draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX at Attachment 14 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/195].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) clarify that relief applies only where the issuer of the convertible note or convertible preference share is also the issuer of the underlying security;</li> <li>(b) narrow the scope of relief so that it applies only to convertible notes or convertible preference shares that are convertible at the election of the holder;</li> <li>(c) change the exemption to a modification;</li> <li>(d) update the name of the legislative instrument; and</li> <li>(e) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C12Q1 Do you agree with our proposal to continue our relief and remake [CO 00/195]?</p> <p>C12Q2 Do you agree with our proposal to clarify that the issuer of the convertible must be the same as the issuer of underlying securities?</p> <p>C12Q3 Do you agree that we should only grant relief to permit transaction-specific disclosure for convertibles in limited cases?</p> <p>C12Q4 Do you agree that conversion at the option of the holder ensures a sufficient relationship between the convertible and underlying security so that the use of transaction-specific disclosure is appropriate? Are there other conversion scenarios where this sufficient relationship would also be present, and to which you consider we should extend our relief (e.g. should we extend our relief to 'converting securities', where conversion occurs automatically in accordance with the terms of the security)?</p> <p>C12Q5 Should any specific additional disclosure requirements apply when making an offer of convertibles using a transaction-specific prospectus? Are there any other conditions or requirements that you consider should apply to our modification?</p> <p>C12Q6 Do you consider past reliance on [CO 00/195] has, in any particular cases, resulted in investors being provided with less information (in the prospectus, and when read together with the issuer's continuous disclosure) than they require to make an informed investment decision?</p> |

| Proposal  | Your feedback   |
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| <p>C13 To preserve its effect beyond its sunset date, we propose to continue the relief currently given by [CO 08/35] in a new legislative instrument that reflects current drafting practice, without only minor amendments to reflect new rights issue structures: see draft ASIC Corporations (Non-Traditional Rights Issues) Instrument 2015/XX at Attachment 15 to this consultation paper. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 08/35].</p> <p>The only changes proposed are to:</p> <ul style="list-style-type: none"> <li>(a) extend the relief to rights issues conducted using a PAITREO structure;</li> <li>(b) update the name of the legislative instrument; and</li> <li>(c) reflect current drafting practice and update the format of the current document.</li> </ul> | <p>C13Q1 Do you agree with our proposal to remake [CO 08/35]? If not, why not?</p> <p>C13Q2 Do you agree with our proposal to extend the relief to rights issues conducted using a PAITREO structure?</p> |
| <p>D1 We propose to repeal [CO 00/167], which would otherwise sunset on 1 April 2017. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/167].</p>  | <p><i>There are no specific feedback questions for this proposal.</i></p>   |
| <p>D2 We propose to repeal [CO 00/177], which would otherwise sunset on 1 April 2017. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/177].</p>  | <p><i>There are no specific feedback questions for this proposal.</i></p>   |
| <p>D3 We propose to repeal [CO 00/222], which would otherwise sunset on 1 October 2016. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/222].</p>  | <p><i>There are no specific feedback questions for this proposal.</i></p>   |
| <p>D4 We propose to repeal [CO 00/229], which would otherwise sunset on 1 October 2016. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/229].</p>  | <p><i>There are no specific feedback questions for this proposal.</i></p>   |
| <p>D5 We propose to repeal [CO 00/238], which would otherwise sunset on 1 October 2016. You can access the current instrument on <a href="http://www.comlaw.gov.au">www.comlaw.gov.au</a> by clicking on the following direct link: [CO 00/238].</p>  | <p><i>There are no specific feedback questions for this proposal.</i></p>   |

| Proposal   | Your feedback  |
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| <p>E1 We propose to consolidate (and where appropriate, update) the following of our existing Ch 6D regulatory guides into one new regulatory guide:</p> <ul style="list-style-type: none"> <li>(a) RG 23;</li> <li>(b) RG 56;</li> <li>(c) RG 99;</li> <li>(d) RG 152;</li> <li>(e) RG 155;</li> <li>(f) RG 157; and</li> <li>(g) RG 158.</li> </ul> <p>See draft RG 000 at Attachment 16 to this consultation paper.</p> | <p>E1Q1 Do you have any general comments on our proposed consolidation of seven current regulatory guides into draft RG 000?</p> <p>E1Q2 Do you have any specific comments on any of our existing policies that have been consolidated into draft RG 000?</p>  |
| <p>E2 We propose to update our policy on minimum subscription and quotation conditions: see Section I of draft RG 000 at Attachment 16 to this consultation paper.</p>   | <p>E2Q1 Do you have any comments on our updated guidance on minimum subscription and quotation conditions in draft RG 000?</p> <p>E2Q2 Is the guidance that we have given on what happens if the minimum subscription condition and/or quotation condition are not satisfied adequate and useful? If not, please explain why, giving examples.</p>   |
| <p>E3 We propose to give guidance that if the quotation condition applies to the offer of both primary securities and attaching securities (e.g. an offer of shares with attaching options), the issuer should deal with applications for all securities offered under the disclosure document in the same way: see draft RG 000.244–RG 000.246.</p>   | <p>E3Q1 Should an issuer be permitted to issue quoted shares and non-quoted free attaching options under a disclosure document that states or implies that both shares and attaching options will be quoted?</p> <p>E3Q2 Do you agree that an issuer should deal with applications for shares and attaching options offered under a disclosure document in the same way, if the quotation condition applies to both?</p> |

| Proposal   | Your feedback   |
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| <p>E4 We propose to retain and further clarify our guidance on how we exercise ASIC’s administrative powers to extend the exposure period applying to a disclosure document offering non-quoted securities. We propose to retain our guidance from RG 152.13 that, where we consider it appropriate to do so, we will extend the exposure period for a period of no less than seven days (unless we are extending the period because a national public holiday falls in the first seven days after lodgement of a disclosure document that is subject to the exposure period, in which case we will extend the period for the number of days there are holidays): see draft RG 000.160–RG 000.164 in Attachment 16 to this consultation paper.</p> | <p>E4Q1 Do you consider that we should extend an exposure period for a period of less than seven days? And if so, given the underlying policy of the exposure period, why?</p>  |
| <p>E5 We propose to clarify our guidance to make it clear that, once we have extended an exposure period, we will not subsequently revoke that extension.</p>  | <p>E5Q1 Do you agree with our proposal to make it clear that, once we have extended an exposure period, we will not subsequently revoke that extension?</p> <p>E5Q2 Do you consider that we should adopt a policy where, in certain circumstances, we revoke an extended exposure period? And if so, in what circumstances should we do so?</p> |
| <p>E6 We propose to provide guidance on how an issuer can withdraw an offer under a disclosure document. We consider offers can be withdrawn by changing the terms of the offer under a supplementary or replacement disclosure document. Where we consider that a disclosure document is defective, we may proceed to a final stop order on the document regardless of whether the issuer proposes to withdraw it or not: see draft RG 000.131–RG 000.133 in Attachment 16 to this consultation paper.</p>  | <p>E6Q1 Do you have any comments on our proposed guidance on withdrawing an offer under a disclosure document, set out at draft RG 000.131–RG 000.133?</p>  |

| Proposal  | Your feedback   |
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| <p>E7 We propose to update and reorganise our guidance on the use of a transaction-specific prospectus when offering certain convertibles (contained in current RG 66.17–RG 66.22) to:</p> <ul style="list-style-type: none"> <li>(a) reflect the proposed update to our relief in contained in proposal C12; and</li> <li>(b) distinguish the scope of our remade relief in draft ASIC Corporations (Offers of Convertibles) Instrument 2015/XX from new relief available for bank hybrids under draft ASIC Corporations (Regulatory Capital Securities) Instrument 2015/XX.</li> </ul> <p>We also propose to move our policy on transaction-specific prospectuses in current RG 66 to draft RG 000 (where we think it more appropriately and logically fits). RG 66 will be updated to only set out our regulatory guidance on transaction-specific PDSs: see proposal F3.</p> <p>Our updated guidance is set out in Section C of draft RG 000 in Attachment 16 to this consultation paper.</p> | <p>E7Q1 Do you have any general comments on our proposed guidance on the use of a transaction-specific prospectus when offering certain convertible securities as set out in Section C of draft RG 000?</p> <p>E7Q2 Is there any element of the class of securities for which relief is given that is unclear or would benefit from additional or more detailed guidance?</p> |
| <p>F1 We propose to update RG 173 to consolidate:</p> <ul style="list-style-type: none"> <li>(a) our existing guidance found in that guide;</li> <li>(b) our existing guidance from RG 213 regarding the on-sale of quoted securities that are issued on the conversion of convertible notes issued to wholesale investors or otherwise without prospectus disclosure; and</li> <li>(c) proposed new guidance on disclosure and on-sale relief for bank hybrids.</li> </ul> <p>See a marked-up version of draft RG 173 at Attachment 17 to this consultation paper.</p>   | <p>F1Q1 Do you have any comments on our draft update to RG 173?</p>   |
| <p>F2 We propose to revoke RG 213 when the updated RG 173 is released.</p>  | <p>F2Q1 Do you have any comments on our proposal to revoke RG 213?</p>  |

| Proposal  | Your feedback   |
|---|---|
| <p>F3 We propose to update and reissue the following four regulatory guides to reflect changes arising from the relocation of guidance into draft RG 000 and the remaking of class orders referred to in the guides:</p> <ul style="list-style-type: none"> <li>(a) RG 55;</li> <li>(b) RG 66;</li> <li>(c) RG 189 and</li> <li>(d) RG 228.</li> </ul> <p>The only other changes proposed are to reflect changes to related legislation since the guides were originally published and to reflect any other non-substantive changes required. There are no substantive changes to the policy underlying these regulatory guides:</p> <p>See the marked-up versions of draft RG 55, RG 189 and RG 228 in Attachments 18, 20, and 21 respectively. The proposed changes to draft RG 66 are not marked up because we have reformatted this guide into our current template: see Attachment 19.</p> | <p>F3Q1 Do you have any comments on our draft updates to these four existing regulatory guides?</p> |