



**ASIC**

Australian Securities & Investments Commission

## CONSULTATION PAPER 240

# Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters

October 2015

### About this paper

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

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

- Class Order [CO 98/100] *Rounding in financial reports and directors' reports*, which is due to expire on 1 April 2016;
- Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable* and Class Order [CO 98/2395] *Transfer of information from the directors' report*, which are due to expire on 1 October 2016;
- Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company* and Class Order [CO 98/2016] *Entities which cease to be disclosing entities before their deadline*, which are due to expire on 1 October 2017; and
- Class Order [CO 08/15] *Disclosing entities—half-year financial reporting relief*, which is due to expire on 1 April 2018.

Note: The draft ASIC instruments are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 240.

### 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 1 October 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.

# Contents

- The consultation process .....4**
- A Background .....5**
  - Purpose of 'sunsetting' legislative instruments .....5
  - Our approach to remaking legislative instruments .....5
- B Remaking of ASIC class orders .....7**
  - Your feedback .....7
  - Rounding in financial and directors' reports—[CO 98/100] .....7
  - Uncontactable members—[CO 98/101] .....9
  - Directors' reports—[CO 98/2395] .....10
  - Synchronisation of financial year—[CO 98/96] .....11
  - Disclosing entities—[CO 98/2016] and [CO 08/15] .....12
- Key terms .....15**

## The consultation process

### Making a submission

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

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

Please refer to our privacy policy at [www.asic.gov.au/privacy](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 30 October 2015 to:

Douglas Niven  
Senior Executive Leader  
Financial Reporting and Audit  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000  
facsimile: + 61 2 9911 5231  
email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

### What will happen next?

<b>Stage 1</b>	1 October 2015	ASIC consultation paper released
<b>Stage 2</b>	30 October 2015	Comments due on the consultation paper
<b>Stage 3</b>	January 2016	Commencement of remade instrument(s)

## A Background

### Key points

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

### Purpose of 'sunseting' legislative instruments

- 1 Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the 10th anniversary of its registration on the Federal Register of Legislative Instruments (FRLI). Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

### Our approach to remaking legislative instruments

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

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

## B Remaking of ASIC class orders

### Key points

We are proposing to remake:

- Class Order [CO 98/100] *Rounding in financial reports and directors' reports*, which sunsets on 1 April 2016;
- Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable*, which sunsets on 1 October 2016;
- Class Order [CO 98/2395] *Transfer of information from the directors' report*, which sunsets on 1 October 2016;
- Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company*, which sunsets on 1 October 2017;
- Class Order [CO 98/2016] *Entities which cease to be disclosing entities before their deadline*, which sunsets on 1 October 2017; and
- Class Order [CO 08/15] *Disclosing entities—half-year financial reporting relief*, which sunsets on 1 April 2018.

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

Each class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument. The draft ASIC instruments, which reflect the minor amendments proposed in this paper, are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 240.

### Your feedback

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

### Rounding in financial and directors' reports—[CO 98/100]

#### Background

- 7 Part 2M.3 of the *Corporations Act 2001* (Corporations Act) requires specified entities to prepare and lodge with ASIC a financial report, directors' report and auditor's report (Pt 2M.3 reports). In addition, these reports must be circulated or made available to members.

- 8 The Corporations Act specifies the information to be included in the directors' report and requires the financial report to be prepared in accordance with accounting standards. An entity is required to keep financial records that would enable true and fair financial statements to be prepared and audited.
- 9 In the absence of ASIC relief, entities preparing financial reports under the Corporations Act would be required to present amounts to the lowest level (e.g. cents).
- 10 The Corporations Act and accounting standards require amounts to be disclosed in the Pt 2M.3 reports. Amounts disclosed will include the amounts recorded in the entity's financial records.
- 11 For larger entities, disclosure of the exact amounts from the financial records would result in unnecessary clutter in the reports. Excessive detail can detract from the usefulness of the financial statements to users as they become more difficult to read and important information may be obscured.
- 12 [CO 98/100] generally allows entities to round the amounts presented in the Pt 2M.3 reports to at least the nearest thousand dollars. The extent to which rounding is allowed may vary depending on the nature or amount of the item being disclosed.

## Proposal

**B1** To preserve its effect beyond the sunset date of 1 April 2016, we propose to continue the relief currently given by [CO 98/100] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2015/XX at Attachment 1 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: [\[CO 98/100\]](#).

The only changes proposed are to:

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

## Rationale

- 13 We have formed the preliminary view that [CO 98/100] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## Uncontactable members—[CO 98/101]

### Background

- 14 Section 314 of the Corporations Act requires a company, registered managed investment scheme (registered scheme) or disclosing entity to send to members the financial report and directors' report for a financial year, and an auditor's report on the financial report; or a concise report (s314 reports).
- 15 Section 315 of the Corporations Act specifies the deadlines for providing the s314 reports to members. A member can elect not to receive a copy of the reports.
- 16 A hard copy of the s314 reports must be sent to each member who has elected to receive the reports, unless the member has elected to receive an electronic copy. The election made by a member is a standing election until the member changes that election.
- 17 Where a member is contactable and does not respond to an election notice from an entity, the entity does not need to send the member a financial report but must make the reports accessible through a website.
- 18 For entities with a large number of members, significant costs may be incurred in producing and distributing hard copies of the reports.
- 19 [CO 98/101] defines 'uncontactable member', and relieves a company, registered scheme or disclosing entity from its obligations under s314 and 315 if members are uncontactable. If a member has not advised the entity of their change of address, or otherwise attempted to contact the entity over a six-year period, it is unlikely that they will be further disadvantaged by the relief provided under the class order.
- 20 The condition in the instrument to send a notice to the member for a period of not less than six years is consistent with the requirements in s1343. Under s1343, a company may, after six years, execute a transfer of securities to ASIC on behalf of a security holder if the company:
- (a) has reasonable grounds to believe that the member is not residing at the address shown in the company's register of security holders; and
  - (b) has been unsuccessful in communicating with the member after exercising reasonable diligence to do so.

### Proposal

- B2** To preserve its effect beyond the sunset date of 1 October 2016, we propose to continue the relief currently given by [CO 98/101] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Uncontactable Members) Instrument 2015/XX at Attachment 2 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: [\[CO 98/101\]](#).

The only changes proposed are to:

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

## Rationale

- 21 We have formed the preliminary view that [CO 98/101] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## Directors' reports—[CO 98/2395]

### Background

- 22 Part 2M.3 of the Corporations Act requires certain entities to prepare an annual financial report and a directors' report. Generally, these reports must be lodged with ASIC and sent to members. Disclosing entities are also required to prepare a financial report and directors' report for a half year.
- 23 The Corporations Act specifies the information to be included in a directors' report. This information varies depending on the type of entity (e.g. disclosing entity, public company or proprietary company, or registered scheme).
- 24 There may be instances where some of the information required to be included in the directors' report is more useful to users if it is included in the financial report or in a document separate to the reports (separate report). More flexibility may allow related information to be located in the same place and presented more effectively.
- 25 [CO 98/2395] allows certain information to be transferred from the directors' report to the financial report or a separate report, provided that the reports are not distributed or made available without any separate report accompanying them.

### Proposal

- B3 To preserve its effect beyond the sunset date of 1 October 2016, we propose to continue the relief currently given by [CO 98/2395] in a new

legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Directors' Report Relief) Instrument 2015/XX at Attachment 3 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: [\[CO 98/2395\]](#).

The only changes proposed are to:

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

## Rationale

- 26 We have formed the preliminary view that [CO 98/2395] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## Synchronisation of financial year—[CO 98/96]

### Background

- 27 Section 323D(1) of the Corporations Act states that the first financial year of a company, registered scheme or disclosing entity (entity) commences on the day on which the entity is registered or incorporated, and lasts for 12 months or a period determined by the directors of no longer than 18 months.
- 28 Generally, a subsequent financial year must be 12 months long, although s323D specifically allows it to be longer or shorter by seven days. In certain cases, a subsequent financial year may be for a period of less than 12 months, provided that the change is made in good faith and is in the best interests of the entity.
- 29 An entity that has to prepare consolidated financial statements (parent entity) must ensure that the financial years of its controlled entities are synchronised with its own financial year. Similarly, there may be circumstances where an entity is required by foreign laws to have its financial year synchronised with a parent entity that was not incorporated or formed in Australia (foreign parent).
- 30 The relief under [CO 98/96] is available to an entity that does not meet the requirements in s323D(2A) for changing its financial year, and its foreign

parent is required by law in its place of origin to cause the entity's financial year to be changed. The change must be made in accordance with that foreign requirement, and the financial year of the entity must be no longer than 18 months.

## Proposal

**B4** To preserve its effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 98/96] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Synchronisation of Financial Years) Instrument 2015/XX at Attachment 4 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: [\[CO 98/96\]](#).

The only changes proposed are to:

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

## Rationale

- 31 We have formed the preliminary view that [CO 98/96] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

## Disclosing entities—[CO 98/2016] and [CO 08/15]

### Background

#### [CO 98/2016]

- 32 Section 302 of the Corporations Act requires a disclosing entity to prepare and lodge with ASIC a half-year financial report, directors' report and auditor's report (half-year reports) unless the entity is not a disclosing entity when lodgement is due.
- 33 There is no equivalent provision in the Corporations Act for the lodgement of the financial report, directors' report and auditor's report for a financial year (financial year reports) if an entity ceases to be a disclosing entity before lodgement is due.

34 There is no apparent reason for an entity that ceases to be a disclosing entity before its full-year reporting deadline to be treated differently to an entity that ceases to be a disclosing entity before its half-year reporting deadline. At the time of reporting, the entity has users that are similar in more ways to other non-disclosing entities than to disclosing entities.

35 [CO 98/2016] relieves an entity from reporting as a disclosing entity for a financial year if it ceases to be a disclosing entity before the earlier of the lodgement deadline and the deadline for reporting to members.

36 While the entity would still be required to lodge the financial year reports, the content and lodgement dates of the reports are less onerous than for a disclosing entity.

#### **[CO 08/15]**

37 A half year for a disclosing entity is the first six months of a financial year. The initial financial year can be any period up to 18 months from the date of registration or incorporation.

38 Section 323D of the Corporations Act allows an entity to have a subsequent financial year of less than 12 months in certain circumstances. In some cases, the entity may have a financial year of between six and 12 months, and may be required to prepare and lodge half-year and financial year reports in quick succession.

39 It is unnecessarily burdensome for a disclosing entity to prepare reports in quick succession and stakeholders are unlikely to be disadvantaged by not receiving a half-year report in close proximity to a financial year report.

40 [CO 08/15] relieves a disclosing entity from the requirement to prepare a half-year report if its financial year lasts for eight months or less. The disclosing entity must give notice of its intention to rely on [CO 08/15] either to the market operator, if listed, or to ASIC if unlisted.

#### **Proposal**

**B5** To preserve their effect beyond their respective sunset dates of 1 October 2017 and 1 April 2018, we propose to continue the relief currently given by [CO 98/2016] and [CO 08/15] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Disclosing Entities) Instrument 2015/XX at Attachment 5 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: [\[CO 98/2016\]](#) and [\[CO 08/15\]](#).

The only changes proposed are to:

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

- (c) simplify the drafting to give greater clarity;
- (d) update legislative references and definitions; and
- (e) correct any minor drafting errors.

## **Rationale**

- 41 We have reached the preliminary view that [CO 98/2016] and [CO 08/15] are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of these class orders.
- 42 As [CO 98/2016] and [CO 8/15] both provide relief from financial reporting obligations to disclosing entities only, we have decided to combine the relief into a single legislative instrument.

## Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Ch 6 (for example)	A Chapter of the Corporations Act (in this example numbered 6), unless otherwise specified
[CO 98/100] (for example)	An ASIC class order (in this example numbered 98/100) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Div 5 (for example)	A Division of the Corporations Act (in this example numbered 5), unless otherwise specified
entity	A company, registered scheme or disclosing entity
financial year reports	The financial report, directors' report and auditor's report for a financial year
foreign parent	A parent entity that was not incorporated or formed in Australia
half-year reports	The half-year financial report, directors' report and auditor's report
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
Pt 2M.3 reports	A financial report, directors' report and auditor's report required to be lodged with ASIC under Pt 2M.3 of the Corporations Act
Pt 3 (for example)	A Part of the Corporations Act (in this example numbered 3), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
RIS	Regulation Impact Statement
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
s314 reports	Either: <ul style="list-style-type: none"> <li>the financial report and directors' report for a financial year, and an auditor's report on the financial report; or</li> <li>a concise report</li> </ul>

<b>Term</b>	<b>Meaning in this document</b>
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect