



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 243

Remaking ASIC class orders on electronic lodgement of financial reports and dual lodgement relief

November 2015

About this paper

This consultation paper sets out ASIC's proposals to remake as a single new ASIC instrument our class orders on electronic lodgement of reports and dual lodgement relief. Under the *Legislative Instruments Act 2003*, these class orders will expire if not remade.

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

- Class Order [CO 00/2451] *Electronic lodgement of certain reports with the ASX: approval*, which is due to expire on 1 April 2017;
- Class Order [CO 06/6] *Dual lodgement relief for NSX-listed disclosing entities*, which is due to expire on 1 April 2016; and
- Class Order [CO 98/104] *Dual lodgement relief for ASX-listed entities*, which is due to expire on 1 October 2016.

Note: The draft ASIC instrument is available on our website at www.asic.gov.au/cp under CP 243.

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 19 November 2015 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

Making a submission

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

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

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

Comments should be sent by 18 December 2015 to:

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Senior Executive Leader
Financial Reporting and Audit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000
facsimile: (02) 9911 5231
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What will happen next?

Stage 1	19 November 2015	ASIC consultation paper released
Stage 2	18 December 2015	Comments due on the consultation paper
Stage 3	February 2016	Commencement of remade instrument

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 instrument without substantive changes.

B Remaking ASIC class orders

Key points

We are proposing to remake as a single new instrument:

- Class Order [CO 00/2451] *Electronic lodgement of certain reports with the ASX: approval*, which sunsets on 1 April 2017;
- Class Order [CO 06/6] *Dual lodgement relief for NSX-listed disclosing entities*, which sunsets on 1 April 2016; and
- Class Order [CO 98/104] *Dual lodgement relief for ASX-listed entities*, which sunsets on 1 October 2016.

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

The class orders have been redrafted into a single new instrument using ASIC's current style and format, while preserving the current effect of the instruments. The draft ASIC instrument, which reflects the minor amendments proposed in this paper, is available on our website at www.asic.gov.au/cp under CP 243.

Your feedback

- 6 You are invited to comment on any of our proposals to remake the ASIC class orders described 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.

Electronic lodgement of financial reports and dual lodgement relief: [CO 00/2451], [CO 06/6] and [CO 98/104]

Background

- 7 Sections 319(1) and 320(1) of the *Corporations Act 2001* (Corporations Act) require a company, registered managed investment scheme or disclosing entity to lodge a financial report, a directors' report and an auditor's report (the reports) for a financial year or half-year with ASIC.

Dual lodgement relief

- 8 The Listing Rules of ASX Limited (ASX), National Stock Exchange of Australia Limited (formerly Stock Exchange of Newcastle Limited) (NSX) and Asia Pacific Stock Exchange Limited (APX) require the reports lodged

by a listed entity under s319 or 320 to be lodged with the relevant market operator (i.e. ASX, NSX or APX) at the same time they are lodged with ASIC.

Note: On 11 November 2015, APX was advised that the ASIC delegate has consented to the use of the name 'Sydney Stock Exchange Limited' by Asia Pacific Stock Exchange Limited ACN 080 399 220. As at the date of release of this consultation paper, a licence variation application to change the name on its market licence had not been submitted to ASIC. The instrument would be updated to reflect the name change when it is remade.

- 9 Regulatory Guide 28 *Relief from dual lodgement of financial reports* (RG 28) sets out the arrangements ASIC has agreed with ASX to avoid the need for dual lodgement of the reports.
- 10 [CO 98/104] and [CO 06/6] allow disclosing entities listed on ASX or NSX to lodge the reports only with ASX or NSX as agent for ASIC to avoid dual lodgement of the reports.

Electronic lodgement

- 11 Section 352(1)(b) of the Corporations Act allows a document to be lodged with ASIC electronically if ASIC has approved, in writing, the electronic lodgement of documents of that kind. The document is taken to be lodged with ASIC if it is lodged in accordance with the approval.
- 12 [CO 00/2451] allows bodies listed on ASX to lodge the reports electronically with ASX as an agent for ASIC.

Proposal

B1 To preserve their effect beyond the respective sunset dates of 1 April 2017, 1 April 2016 and 1 October 2016, we propose to continue the relief currently given by [CO 00/2451], [CO 06/6] and [CO 98/104] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Electronic Lodgement of Financial Reports) Instrument 2015/XX attached to this consultation paper. You can access the current instruments on www.comlaw.gov.au by clicking on the following direct links: [\[CO 00/2451\]](#), [\[CO 06/6\]](#) and [\[CO 98/104\]](#).

The only changes proposed are to:

- (a) combine the effect of [CO 00/2451], [CO 06/6] and [CO 98/104] into a single instrument and extend the electronic lodgement relief to entities listed on NSX and provide both the electronic and dual lodgement relief to entities listed on APX;
- (b) update the name of the legislative instrument;
- (c) reflect current drafting practice and update the format of the current document;
- (d) simplify the drafting to give greater clarity;

- (e) update legislative references and definitions; and
- (f) correct any minor drafting errors.

Rationale

- 13 We have reached the preliminary view that [CO 00/2451], [CO 06/6] and [CO 98/104] 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.
- 14 As the Listing Rules of NSX require electronic lodgement of the reports, we are proposing to extend the relief in [CO 00/2451] to disclosing entities listed on NSX on conditions similar to those currently in [CO 06/6].
- 15 The Listing Rules of APX also require an entity listed on APX to lodge the reports, which may be lodged electronically. We are also proposing to extend the relief in [CO 00/2451] to entities listed on APX so that electronic lodgement of the reports with APX satisfies an entity's obligation to lodge the reports with ASIC.

Key terms

Term	Meaning in this document
APX	Asia Pacific Exchange Limited or the exchange market operated by Asia Pacific Exchange Limited Note: On 11 November 2015, APX was advised that the ASIC delegate has consented to the use of the name 'Sydney Stock Exchange Limited' by Asia Pacific Stock Exchange Limited ACN 080 399 220. As at the date of release of this consultation paper, a licence variation application to change the name on its market licence had not been submitted to ASIC. The instrument would be updated to reflect the name change when it is remade.
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
[CO 98/104] (for example)	An ASIC class order (in this example numbered 98/104) 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
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
NSX	National Stock Exchange of Australia Limited or the exchange market operated by National Stock Exchange of Australia Limited
RIS	Regulation Impact Statement
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect