REPORT 488

Response to submissions on CP 240 Remaking ASIC class orders on rounding and other matters

August 2016

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters* (CP 240) and details our responses to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview/Consultation process

1 In Consultation Paper 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters* (CP 240) we consulted on our proposals to remake certain class orders that are due to sunset on various dates in 2016–18. The class orders generally relate to financial reporting under Pt 2M.3 of the *Corporations Act 2001* (Corporations Act).

2 Class Order [CO 98/100] *Rounding in financial reports and directors' reports* generally allows entities to round amounts presented in a financial report or directors' report to at least the nearest thousand dollars. The extent of rounding depends on the nature or amount of the item presented.

3 Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable* relieves the relevant entity from its obligation to send hard copies of a financial report, directors' report and auditor's report or a concise report to members who are uncontactable.

4 Class Order [CO 98/2395] *Transfer of information from the directors' report* allows certain information to be transferred from the directors' report to the financial report or another report provided the reports are only distributed or made available together.

5 Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company* allows an entity to change its financial year where its foreign parent is required by the law in its place of origin to cause the entity's financial year to be synchronised with its own.

6 Class Order [CO 98/2016] *Entities which cease to be disclosing entities before their deadline* relieves an entity from preparing its financial report as a disclosing entity if it ceases to be a disclosing entity before the earlier of its lodgement deadline and its deadline for reporting to members.

7 Class Order [CO 08/15] *Disclosing entities: Half-year financial reporting relief* relieves a disclosing entity from preparing a financial report for a half-year if its financial year lasts for eight months or less.

8 Our view is that it is necessary to remake these class orders because they are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework.

9 This report highlights the key issues that arose out of the submissions received on CP 240 and our responses to those issues.

10 This report is not meant to be a comprehensive summary of all responses received. We have limited this report to the key issues.

11 We received four non-confidential submissions on CP 240. We are grateful to respondents for taking the time to send us their comments.

12 For a list of the non-confidential respondents to CP 240, see the appendix. Copies of those submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 240.

B Remaking ASIC class orders

Key points

This section outlines the key issues raised by respondents—and our responses to those issues.

Class Order [CO 98/100] *Rounding in financial reports and directors' reports*

13 For [CO 98/100], we received feedback on:

(a) consolidated and parent entity information;

(b) rounding to the nearest dollar;

(c) comparative information; and

(d) the commencement date.

Consolidated and parent entity information

14 One respondent wanted the remade instrument to clarify the extent to which rounding can be applied if the financial report includes both consolidated and parent entity financial statements. In some cases the quantitative threshold of total assets that determines the extent of rounding can differ between the consolidated entity and the parent entity.

15 The respondent noted that [CO 98/100] links rounding to the total assets in the balance sheet or consolidated balance sheet. It is unclear whether different rounding applies to the consolidated financial statements and parent entity financial statements if the total assets presented in each meet different thresholds. An alternative view is that rounding for both the consolidated and parent entity financial statements is determined by the higher of the thresholds met.

ASIC's response

ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 states that the rounding factor is determined by reference to the consolidated balance sheet unless the entity did not prepare a consolidated balance sheet, in which case the rounding factor is determined by reference to the entity's balance sheet.

Rounding to the nearest dollar

16 CP 240 observed that in the absence of [CO 98/100] entities need to present amounts in the financial statements to the lowest level recorded in the accounting records (e.g. cents).

17 One respondent commented that entities with total assets of less than $10 million are not eligible for rounding under the existing instrument. While typically not done in practice, companies with assets of less than $10 million should present amounts in the financial statements to the nearest cent.

ASIC's response

ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 specifies that entities with total assets of less than $10 million can round to the nearest dollar except where a different rounding factor is specified for a particular item.

Comparative information

18 Similar to the issue in paragraph 14, two respondents sought clarification on the rounding factor to be applied where the total assets differed between the current year and the comparative period. While practice is to restate comparative information to reflect the rounding adopted in the current period, the respondents felt that clarification would be helpful.

ASIC's response

[CO 98/100] required the rounding factor to be determined by reference to the balance sheet at the end of the relevant period. This requirement continues in ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191. Accordingly, if different quantitative thresholds are met in the current and comparative periods, the amounts presented as comparatives will need to be restated to reflect the current period rounding factor.

Commencement date

19 CP 240 indicated that the remade instrument would commence in January 2016. One respondent expressed concern that this may create practical difficulties for entities reporting for financial years and half-years ending on 31 December 2015. The extent of rounding adopted may differ between entities because of differences between the date that the financial statements are completed and the date the remade instrument becomes effective.

20 The respondent suggested that [CO 98/100] not be repealed until its sunset date of 1 April 2016.

> *ASIC's response*
>
> ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 applies to financial years and half-years ending on or after 30 June 2016. [CO 98/100] will continue to apply to financial years and half-years ending before that date under a transitional provision.

Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable*

21 One respondent suggested that the relief provided by [CO 98/101] be extended to circumstances where an electronic copy of the financial report, directors' report and auditor's report or a concise report has been sent to a member who is uncontactable.

22 The respondent pointed out that since the issue of [CO 98/101] the Corporations Act has been amended to allow members to elect to receive the reports electronically. With the increased use of electronic communication with members, it is felt similar issues will arise with email addresses becoming obsolete.

> *ASIC's response*
>
> We have not extended the relief in ASIC Corporations (Uncontactable Members) Instrument 2016/187 to cover electronic copies because we do not believe sending an electronic copy of the reports is as burdensome for an entity as sending a hard copy. However, we will reconsider our position if we become aware of significant problems in this area.

Class Order [CO 98/2395] *Transfer of information from the directors' report*

23 No key issues were brought to our attention.

Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company*

24 One respondent proposed that the relief provided by [CO 98/96] be extended to allow an Australian entity to synchronise its financial year with a foreign parent entity at any time. The perceived benefits are:

(a) a financial year of up to 18 months avoids the need to prepare and have audited an additional financial report under the short financial year mechanism in s323D;

(b) the avoidance of costs that may be necessary to determine whether a foreign parent's jurisdiction requires synchronisation; and

(c) the avoidance of costs to seek individual relief under s340 if [CO 98/96] cannot be relied on.

25 It was suggested that removing restrictions is consistent with government policy to reduce red tape.

ASIC's response

We consider that s323D(2A) provides entities with the scope to synchronise their financial year with that of a foreign parent in most circumstances. ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189 provides relief in the limited circumstances where s323D(2A) may not apply.

Individual relief can be sought by entities where s323DA or ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189 cannot be used.

Class Orders [CO 98/2016] *Entities which cease to be disclosing entities before their deadline* and [CO 08/15] *Disclosing entities: Half-year financial reporting relief*

26 Two respondents identified practical problems for certain newly incorporated entities preparing a half-year financial report.

27 A newly incorporated entity may be placed over an existing entity (including a group), but the financial statements of the new entity are presented as a continuation of the 'old' entity. This is commonly referred to as group reorganisation accounting. It often occurs before an initial public offering with the new entity becoming a disclosing entity.

28 One respondent suggested relief be given from s302 to enable a newly incorporated disclosing entity to prepare half-year financial statements for the period that would have applied to the old entity.

29 For example, a company incorporated on 1 March 2016 and placed over an existing entity with a 31 December financial year has an obligation under the Corporations Act to prepare financial statements for the six months ending 31 August 2016 if it is a disclosing entity. It will also prepare financial statements for its first financial year ending 31 December 2016 (under group organisation accounting, the new company is accounted for

as a continuation of the old company and adopts a short first financial year under s323D).

30 The respondent proposed that the company be given relief from s302 to enable it to prepare its first half-year financial statements for the six months to 30 June 2016. The respondent believed this would:

(a) be consistent with the expectations of the market operator (e.g. ASX);

(b) eliminate the need for multiple sets of financial statements to meet the requirements of the Corporations Act and ASX; and

(c) reduce costs where, for example, the date six months after incorporation does not coincide with the entity's normal reporting cycle.

31 Similar issues can arise for newly incorporated entities that become disclosing entities without being party to a group reorganisation.

> *ASIC's response*
>
> We have remade [CO 98/2016] and [CO 08/15] as ASIC Corporations (Disclosing Entities) Instrument 2016/190.
>
> The respondent's proposal is difficult to implement because similar issues can arise when a pre-existing entity is placed over another entity. The practical difficulties can be overcome by appropriate planning. Entities can continue to seek individual relief under s340.

Appendix: List of non-confidential respondents

- Deloitte
- Hardidge, Mr David
- KPMG
- PricewaterhouseCoopers