



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 272

Remaking ASIC class orders on time-sharing schemes

November 2016

About this paper

This consultation paper sets out ASIC's proposals to remake our class orders on time-sharing schemes. Under the *Legislation Act 2003*, these class orders will expire ('sunset') if not remade.

We are seeking feedback from the time-sharing industry, consumers and consumer advocates (including whether any additional consumer protections are needed), and other interested parties on our proposals to:

- remake, as a single new instrument, our class orders relating to time-sharing schemes—[CO 00/2460], [CO 02/315] and [CO 03/104]; and
- change our approach to, or amend, [CO 02/237], related pro formas (PF 205, PF 206, PF 207, PF 208 and PF 209), [CO 13/760], the enhanced fee disclosure requirements and our guidance in Regulatory Guide 160 *Time-sharing schemes* (RG 160).

Our proposals relate to relief and obligations in relation to the managed investment, Australian financial services (AFS) licensing and product disclosure provisions of the *Corporations Act 2001*.

Note: The draft ASIC instrument, and relevant pro formas, are available on our website at www.asic.gov.au/cp under CP 272.

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 November 2016 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 time-sharing schemes. 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 F, '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 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 12 January 2017 to:

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What will happen next?

Stage 1	17 November 2016	ASIC consultation paper released
Stage 2	12 January 2017	Comments due on the consultation paper
Stage 3	March 2017	Commencement of remade instrument and release of updated guidance

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 *Legislation Act 2003*, 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 Legislation (FRL). 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.
- 3 Where an instrument is deemed to no longer serve a regulatory purpose we will consult on repealing it. We will repeal instruments rather than allow them to sunset so that industry is certain of our intentions and confident that, where instruments are removed, this was our intention.

Our approach to remaking legislative instruments

- 4 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 consumer trust and confidence and ensuring fair and efficient markets.
- 5 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.
- 6 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.

Overview of this paper

- 7 We are seeking feedback on our proposals in this paper from the time-sharing industry, consumers and consumer advocates (including whether any additional consumer protections are needed), and other interested parties. Our proposals relate to relief and obligations in relation to the managed investment, Australian financial services (AFS) licensing and product disclosure provisions of the *Corporations Act 2001* (Corporations Act).
- 8 In Section B of this paper, we are proposing to:
- (a) remake as a single new instrument:
 - (i) Class Orders [CO 00/2460] *Time-sharing schemes—property valuations*, [CO 02/315] *Time-sharing schemes—use of loose-leaf price list* and [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*, with amendments; and
 - (b) incorporate the following into the new instrument:
 - (i) transitional relief for existing operators relying on Class Order [CO 02/237] *Time-sharing schemes—operation of rental pool*, with amendments;
 - (ii) for registered time-sharing schemes—the template cooling-off statement under Pro Forma 208 *Time-sharing schemes—cooling-off statement* (PF 208), with amendments;
 - (iii) the Australian financial services (AFS) licence conditions under Pro Forma 209 *Australian financial services licence conditions* (PF 209), with amendments; and
 - (iv) modifications to the enhanced fee disclosure requirements in Sch 10 to the Corporations Regulations 2001 (Corporations Regulations).

- 9 Our proposals in Section C relate to expanding the definition of ‘special custody assets’, and reducing the frequency of audits, under Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*.
- 10 Section D includes a number of proposals relating to time-sharing pro formas, including:
- (a) the withdrawal, for new operators, of Pro Forma 205 *Time-sharing schemes formerly exempt under state laws* (PF 205), Pro Forma 206 *Time-sharing schemes—Chapter 5C relief* (PF 206) and Pro Forma 207 *Title-based time-sharing schemes* (PF 207);
 - (b) amendments for existing operators relying on case-by-case relief based on PF 206 and PF 207; and
 - (c) amendments to PF 208 so that it applies only to exempt time-sharing schemes and reflects the wording of the cooling-off statement for registered time-sharing schemes in the new instrument.
- 11 Our proposals in Section E relate to updates to our guidance in Regulatory Guide 160 *Time-sharing schemes* (RG 160).

B Remaking ASIC class orders

Key points

We are proposing to remake, as a single new instrument, [CO 00/2460] and [CO 02/315], which are due to expire on 1 April 2017, and [CO 03/104], which is due to expire on 1 October 2017.

We have formed the preliminary view that these class orders continue to form a useful part of the legislative framework. Although the fundamental policy principles that underpin the class orders have not changed, we are proposing some amendments to our relief.

We are also seeking feedback on our proposals to incorporate the following into the new instrument:

- transitional relief for existing operators relying on [CO 02/237], with amendments;
- for registered time-sharing schemes—the template cooling-off statement under PF 208, with amendments;
- the AFS licence conditions under PF 209, with amendments; and
- modifications to the enhanced fee disclosure requirements in Sch 10 to the Corporations Regulations 2001 (Corporations Regulations).

The draft ASIC instrument, which reflects the amendments proposed in this section, is available on our website at www.asic.gov.au/cp under CP 272.

What is a time-sharing scheme?

- 12 A time-sharing scheme is specifically included as a managed investment scheme as defined in s9 of the Corporations Act.
- 13 A time-sharing scheme is defined in s9 as a scheme, undertaking or enterprise, whether in Australia or elsewhere, that operates for a period of three years or more and in which participants are, or may become, entitled to use, occupy or possess the property for two or more periods.
- 14 In practice, time-sharing schemes are generally structured as:
- (a) points-based arrangements where members buy points that they can redeem at certain resorts or holiday accommodation; or
 - (b) arrangements where members are given the use of a specific property for a given period of time.

Obligations of operators of time-sharing schemes

- 15 In general, operators of time-sharing schemes must comply with the managed investment, AFS licensing and product disclosure provisions of the Corporations Act. This requires the operator of a scheme to be a public company and to hold an AFS licence. The scheme itself must also be registered and there must be disclosure relating to the issue of interests in the scheme.
- 16 As part of the AFS licensing process, we also impose specific licence conditions relating to cooling-off periods, fees and charges, and deposits.
- 17 The class orders in this section, which we are proposing to remake as a single new instrument, provide relief from the managed investment, AFS licensing and product disclosure provisions in certain circumstances.
- 18 [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160) sets out our approach to regulating time-sharing schemes under the Corporations Act and the relief we give for time-sharing schemes. Our proposed updates to RG 160 are set in Section E of this paper.
- 19 The nature of a time-sharing scheme is to produce ‘lifestyle’ or ‘recreational’ benefits to its members. Members who purchase time-sharing interests are not generally acquiring a financial product for the purposes of a financial investment. It is in this context that we have given various relief to time-sharing schemes.

Class Order [CO 00/2460] *Time-sharing schemes—property valuations*

Background

- 20 [CO 00/2460] exempts responsible entities of registered time-sharing schemes from the requirement that scheme property be valued at regular intervals under s601FC(1)(j) and 601HA(1)(c) of the Corporations Act. The relief is conditional on the responsible entity having scheme property valued when it has reasonable grounds to believe a valuation is in the best interests of members.
- 21 We granted this relief because we consider that it may be onerous to require a responsible entity to regularly revalue scheme property, taking into account the nature of a time-sharing scheme. This is because the regular valuation of the scheme property is not generally relevant to the needs of members or the management of the time-sharing scheme.

Proposal

B1 To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 00/2460] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 00/2460\]](#).

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;
- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (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.

Your feedback

B1Q1 Do you rely on the relief in [CO 00/2460]? Are you aware of widespread reliance on [CO 00/2460]?

B1Q2 Do you agree with the proposal to continue the relief in [CO 00/2460] and with the terms of the relief? If not, please provide reasons.

B1Q3 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

B1Q4 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

B1Q5 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.

Rationale

22 We have reached the preliminary view that [CO 00/2460] continues to form a useful part of the legislative framework.

Restriction on promotion of the scheme as a means of generating a financial return

23 We are proposing to include a new requirement that the time-sharing scheme must not be promoted as a means of generating a financial return (other than

by way of a rental pool) to reflect the nature of the scheme operated. This is consistent with the policy rationale underpinning the relief.

Class Order [CO 02/315] *Time-sharing schemes—use of loose-leaf price list*

Background

- 24 [CO 02/315] grants relief to responsible entities of registered time-sharing schemes from the requirement in s601GA(1)(a) of the Corporations Act to specify the price to purchase an interest in the scheme in the scheme's constitution.
- 25 Relief is provided because we consider it would generally be difficult for the responsible entity to set out the purchase price of an interest in the time-sharing scheme in the constitution. This is because it may not be quick and easy to update the constitution to include the purchase price. We also recognise that having to continuously update the constitution may impede the prices being negotiable and variable. The price paid by a person acquiring an interest will not affect the value of other members' interests, in contrast to many managed funds.
- 26 The relief is conditional on the operator:
- (a) ensuring any application is voidable at the option of the applicant during the cooling-off period;
 - (b) ensuring each application form is accompanied by a cooling-off statement in the form approved by ASIC;
 - (c) ensuring that no interest is sold unless a person has provided acknowledgement of receipt of the cooling-off statement;
 - (d) ensuring the cooling-off rights are prominently displayed in the Product Disclosure Statement (PDS) and application form;
 - (e) maintaining written records of each cooling-off statement given and keeping these records for seven years;
 - (f) paying continuing levies and charges in relation to any unsold interests;
 - (g) providing members with a statement, at least annually, of the full details of the composition and calculation of any continuing levies and charges; and
 - (h) for deposits for time-sharing schemes that involve property development, refunding deposits above 30% of the application price payable and holding the balance on trust.

Proposal

B2 To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 02/315] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 02/315\]](#).

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;
- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (c) remove conditions that duplicate the AFS licence conditions under PF 209;
- (d) reflect current drafting practice and update the format of the current document;
- (e) simplify the drafting to give greater clarity;
- (f) update legislative references and definitions; and
- (g) correct any minor drafting errors.

Your feedback

B2Q1 Do you rely on the relief in [CO 02/315]? Are you aware of widespread reliance on [CO 02/315]?

B2Q2 Do you agree with the proposal to continue the relief in [CO 02/315] and with the terms of the relief? If not, please provide reasons.

B2Q3 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

B2Q4 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

B2Q5 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.

Rationale

27 We have reached the preliminary view that [CO 02/315] continues to form a useful part of the legislative framework. We are proposing to include a new requirement that the time-sharing scheme must not be promoted as a means of generating a financial return (other than by way of a rental pool): see paragraph 23.

Removal of conditions that duplicate the AFS licence conditions under PF 209

- 28 The conditions of relief under [CO 02/315] currently overlap significantly with the AFS licence conditions under PF 209 relating to cooling-off periods, fees and charges, and deposits. We are seeking to remove the duplication in the new instrument. For our proposals on incorporating all of the licence conditions under PF 209 for time-sharing schemes into the new instrument, see paragraphs 47–64.

Class Order [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*

Background

- 29 [CO 03/104] grants relief to enable responsible entities of registered time-sharing schemes to acquire, hold and dispose of forfeited interests in the time-sharing scheme at a price that is less than the price that would be payable if the interests were acquired by another person.
- 30 We grant this relief to help in the effective management of the time-sharing scheme for the benefit of members. The ability of the responsible entity to forfeit interests can help encourage members to pay outstanding payments and mitigate the financial impact on other members. The price paid by the responsible entity to acquire and hold the interest will generally be less than the price payable by consumers to acquire a new interest.
- 31 The relief is conditional on the operator ensuring before an interest is issued to a person that disclosure is made to them in the PDS, or otherwise in writing, of the circumstances in which forfeiture can occur and procedures for dealing with forfeiture.

Proposal

- B3** To preserve its effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 03/104] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 03/104\]](#).

The changes proposed are to:

- (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;

- (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);
- (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.

Your feedback

B3Q1 Do you rely on the relief in [CO 03/104]? Are you aware of widespread reliance on [CO 03/104]?

B3Q2 Do you agree with the proposal to continue the relief in [CO 03/104] and with the terms of the relief? If not, please provide reasons.

B3Q3 In relation to the price that the interest is sold for:

(a) Should the responsible entity be required to sell the forfeited interest following the approach outlined for shares in s254Q of the Corporations Act (other than s254Q(1), (9) and (13))—that is, a public auction process?

(b) Should the current requirement for the responsible entity to sell the interests using the price specified in the PDS (if issued in the last 12 months) or at a fair market price be retained?

(c) Is there an alternative sale process that is preferable to the above? Please provide details.

B3Q4 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

B3Q5 Does this approach raise any consumer protection issues? If so, please provide reasons.

B3Q6 Are there any additional protections to assist consumers that we should include in the relief (e.g. should there be a restriction on any payments being required to be made by members after they have forfeited an interest or are any additional disclosures required to assist consumers)? If so, please provide reasons.

Rationale

- 32 We have reached the preliminary view that [CO 03/104] continues to form a useful part of the legislative framework. We are proposing to include a new requirement that the time-sharing scheme must not be promoted as a means of generating a financial return (other than by way of a rental pool): see paragraph 23.

Additional feedback on forfeited interests

- 33 We are seeking your views on whether the relief should be amended to provide that the responsible entity must sell the forfeited interest following the approach outlined in s254Q of the Corporations Act. This would be consistent with the relief granted to responsible entities of schemes (other than time-sharing schemes) from s601FG and 601GA(1)(a) of the Corporations Act under [Class Order \[CO 13/655\] Provisions about the amount of consideration to acquire interests and withdrawal amounts not covered by ASIC Corporations \(Managed Investment Product Consideration\) Instrument 2015/847](#) and [Class Order \[CO 13/656\] Equality of treatment impacting on the acquisition of interests](#).
- 34 We are also seeking your views on whether the current sale process should be retained.

Transitional relief and repeal of Class Order [CO 02/237] Time-sharing schemes—operation of rental pool**Background**

- 35 A rental pool involves the pooling of members' unused time-sharing entitlements for the purpose of renting those entitlements to other people.
- 36 [CO 02/237] grants relief to responsible entities of registered time-sharing schemes and operators of exempt time-sharing schemes from the managed investment, AFS licensing and certain product disclosure provisions in relation to the operation of a rental pool.
- 37 We have granted this relief because the return for members is a small amount and an incidental part of the business associated with the time-sharing scheme.
- 38 The relief is conditional on the operator:
- (a) maintaining a trust account and only disbursing money from the account in accordance with the contractual agreement that governs members' participation in the rental pool;
 - (b) ensuring the trust account is audited at least every six months;
 - (c) ensuring a copy of the auditor's report is given to all members within three months after each audit;
 - (d) keeping for seven years a copy of the contractual agreement that governs members' participation in the rental pool; and
 - (e) complying with s1017D of the Corporations Act.

Proposal

B4 We propose to:

- (a) for existing operators of a rental pool that rely on [CO 02/237]—reduce the frequency of the audit of the trust account from twice a year to once a year and provide transitional relief to effectively continue the relief under [CO 02/237] for those operators (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 02/237\]](#)); and
- (b) repeal [CO 02/237] unless we receive feedback that the relief is still necessary for the operation of new rental pools.

Note: Given the transitional relief proposed, the repeal will not affect existing operators relying on [CO 02/237].

Your feedback

- B4Q1 Do you agree with the proposal to provide transitional relief to existing operators of rental pools relying on [CO 02/237]? If not, please provide reasons.
- B4Q2 Do you agree with the proposal in the transitional relief to reduce the frequency of the audits of the trust account? If not, please provide reasons.
- B4Q3 Do you agree with the proposal to repeal [CO 02/237]? If not, please provide reasons.
- B4Q4 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.
- B4Q5 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

Rationale

39 We have reached the preliminary view that the relief in [CO 02/237] may not be widely used. In addition, it is arguable that the rental pool operated may form part of the single time-sharing scheme operated, rather than comprising an interest in a separate managed investment scheme, which [CO 02/237] currently reflects. We consider that, if this is the case, it is more appropriate to consider any new requests for relief from operators of rental pools on a case-by-case basis.

40 If feedback is received that indicates the relief is still necessary, we are open to reconsidering this position.

41 For those existing operators of rental pools currently relying on the relief in [CO 02/237], we are proposing to provide transitional relief so that the operators still have the benefit of the relief. We have reached the preliminary view that the relief under [CO 02/237] continues to form a useful part of the legislative framework for those operators.

Reducing the frequency of audits

- 42 [CO 02/237] requires the operator to ensure that the trust account that holds the proceeds of the rental pool is audited at least once every six months.. This condition was imposed to protect a member from loss or misappropriation of the proceeds of the rental pool.
- 43 In the transitional relief we are proposing to reduce the frequency of the audits to once a year, which is consistent with the annual audit requirements imposed on registered schemes. We consider that this will produce cost savings to existing operators, which will ultimately be passed on to members, without compromising consumer protection.

Incorporating the template cooling-off statement under PF 208

Background

- 44 Pro Forma 208 *Time-sharing schemes—cooling-off statement* (PF 208) sets out the ASIC-approved form of the cooling-off statement for time-sharing schemes.

Proposal

B5 We propose to:

- (a) for entities that are dealing in interests or operating a registered time-sharing scheme—incorporate the template cooling-off statement, currently in PF 208, into the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper); and
- (b) simplify the drafting of the template cooling-off statement in the new instrument to give greater clarity to consumers about how to exercise their cooling-off rights.

Note: For exempt time-sharing schemes, we are proposing to retain PF 208, but to amend it to reflect the simplified template cooling-off statement: see proposal D1.

Your feedback

- B5Q1 Do you agree with our proposal to incorporate the template cooling-off statement under PF 208 into the new instrument for entities that are dealing in interests or operating a registered time-sharing scheme? If not, please give reasons.
- B5Q2 Do you think a different template or approach would better assist consumers to understand their cooling-off rights? If so, please provide your suggestions.

Rationale

- 45 For entities that are dealing in interests or operating a registered time-sharing scheme, we are proposing to incorporate the template cooling-off statement under PF 208 into the new instrument for ease of reference for these operators. It will also allow more transparency if there are updates to the template.
- 46 We have also sought to make the template simpler for consumers to understand and to highlight key information (e.g. the cooling-off timeframe, the contact details for making a cooling-off request and that there may be an ongoing obligation to continue to pay levies even if a consumer does not use their time-share if the person does not exercise their cooling-off rights).

Incorporating AFS licence conditions under PF 209

Background

- 47 Generally, a person who deals in time-sharing interests or operates a time-sharing scheme must hold an AFS licence to conduct those activities.
- 48 As part of our standard AFS licence conditions under PF 209, the following conditions are imposed on a licensee authorised to deal in time-sharing interests and/or operate a time-sharing scheme as a responsible entity:
- (a) adherence to mandatory cooling-off periods (condition 47 of PF 209);
 - (b) disclosure of charges and levies (condition 48 of PF 209); and
 - (c) handling of purchase money (condition 49 of PF 209).
- Note: For additional details about the AFS licence conditions that apply to time-sharing schemes, see PF 209.
- 49 As noted in paragraph 28, a number of the AFS licence conditions in PF 209 also overlap with the current conditions in [CO 02/315], which we are proposing to remake: see proposal B2.

Proposal

- B6** We propose to:
- (a) consolidate all of the conditions for AFS licensees that operate registered time-sharing schemes and incorporate them in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper);
 - (b) modify the Corporations Act to introduce notional s912AE, which outlines the obligations on AFS licensees that operate registered time-sharing schemes, and make the following amendments to the existing obligations:

- (i) impose obligations on the responsible entity in relation to the provision of a PDS, application form and cooling-off rights in respect of the issue or sale of an interest. Where there is a PDS for the interest, we also propose to continue to impose these obligations on AFS licensees that deal in interests in registered time-sharing schemes under either the licence conditions or the new instrument;
- (ii) require that the responsible entity must take all reasonable steps to ensure that its associates comply with the AFS licensee requirements in relation to the provision of a PDS, application and cooling-off rights if an associate offers to sell an interest;
- (iii) if the responsible entity facilitates financing for the applicant to acquire an interest, require that any amounts paid to the responsible entity in connection with the financing be repaid on exercise of cooling-off rights by the applicant;
- (iv) if financial product advice is provided to a retail client orally in relation to the acquisition of an interest, require that the responsible entity does not issue or sell to a person unless the oral advice includes an explanation of the cooling-off rights available and the fees and costs payable to acquire an interest;
- (v) apply the current conditions that apply to charges and levies to interests held by both the responsible entity and its associates;
- (vi) apply the current conditions that apply to handling of purchase money to money paid to the responsible entity or its associates;
- (vii) clarify that the 30% limit on deposits for the purchase or issue of an interest in a time-sharing scheme only applies where the scheme interest being acquired relates to property development, or part of a property development, which is not ready for occupation; and
- (viii) remove the need to keep records in relation to cooling-off statements provided in circumstances where the person does not acquire an interest in the scheme (records would still be required to be maintained for those people who acquire an interest and exercise their cooling-off rights).

Your feedback

- B6Q1 Do you agree with our proposal to include the conditions for AFS licensees that operate registered time-sharing schemes in the new instrument? If not, please provide reasons.
- B6Q2 Do you agree with our proposal to also continue to impose obligations in relation to the provision of a PDS, application form and cooling-off rights on AFS licensees that deal in interests in time-sharing schemes? If not, please provide reasons.

- B6Q3 Do you agree with the amendments proposed to the existing obligations? If not, please provide reasons.
- B6Q4 Is any transitional period required to comply with the amendments to the existing obligations? If so, please provide reasons.
- B6Q5 Please describe your experience with how time-sharing interests are sold. Please give details about the steps involved, including details of any financing arrangements facilitated by the responsible entity to acquire an interest.
- B6Q6 Do the sales practices involve any unsolicited meetings or telephone calls? If so, should any additional restrictions or obligations be imposed on licensees in relation to these practices to ensure that consumers understand what they are being offered and are not misled?
- B6Q7 In relation to the current cooling-off rights:
- (a) Do you think the cooling-off rights based on consumers having to opt out to cool off are working?
 - (b) Where the interest is acquired during a period when the applicant was accommodated at the property, should the cooling-off period only commence when the licensee knows or ought to know the applicant would return to their usual residence?
 - (c) If the applicant has questions, should the cooling-off period stop and start afresh from the time that the further information has been provided by the licensee to the applicant?
 - (d) Should the cooling-off rights alternatively be on an opt-in basis—that is, an applicant is deemed to have exercised their cooling-off rights if they do not provide an additional written confirmation to the licensee within a prescribed period?
 - (e) What are the optimal cooling-off arrangements, taking into account the needs of consumers and operators, and how time-sharing interests are sold?
- B6Q8 Should the current requirement to give full particulars of the composition and calculation of all continuing charges and levies to members be replaced with an obligation to provide members with the annual budget, together with a summary of key expense categories and the percentage of expenditure for each category, with the levy notice? If not, please provide reasons and outline the information about future charges and levies that would best assist consumers.
- B6Q9 Should actual administrative costs incurred be able to be deducted from the money refunded to the applicant on exercise of cooling-off rights by the applicant? If not, please provide reasons. If yes, please outline the type and amount of any costs that would be deducted.

- B6Q10 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.
- B6Q11 Does this approach raise any consumer protection issues? If so, please provide reasons.
- B6Q12 Are there any additional protections to assist consumers that we should include as obligations (e.g. in relation to: hawking; sales practices; deposits; financing arrangements; use and expiry of points; or disclosure of key information such as the ability to resell or exit the scheme)? If so, please provide reasons.

Rationale

Consolidation of AFS licence conditions in the new instrument

- 50 We consider that the obligations under the AFS licence are better placed in the new instrument to centralise the obligations and the relief that apply in relation to time-sharing schemes.
- 51 [CO 02/315] applies to responsible entities of registered time-sharing schemes. As noted in paragraph 28, the conditions of relief under [CO 02/315] currently overlap with the AFS licence conditions in PF 209 relating to cooling-off periods, fees and charges, and deposits. We are seeking to remove this duplication.
- 52 These obligations are based on the existing AFS licence obligations in PF 209. A licensee will be taken to comply with their current licence conditions for time-sharing schemes if they comply with the obligations.

Conduct of licensees

- 53 We have imposed requirements based on condition 47 of PF 209 on a responsible entity of a registered time-sharing scheme in relation to the provision of a PDS, application form and cooling-off statement to help ensure applicants receive disclosure and cooling-off rights in relation to the acquisition of an interest in the time-sharing scheme. Where there is a PDS for the interest, we are also proposing to continue to impose these requirements on AFS licensees that deal in interests in registered time-sharing schemes. Condition 47 of PF 209 currently imposes obligations on these licensees.

Amendments to existing AFS licence conditions

Conduct of associates

- 54 As time-sharing schemes may involve associates acquiring interests and onselling the interests to retail clients, we consider it is important that the key protections relating to disclosure and cooling-off are also complied with

by the associates and that the responsible entity takes reasonable steps to ensure this occurs.

- 55 Given interests may be held by associates, we consider the responsible entity should ensure that its associates pay the same continuing charges and levies as all other members so that these costs are not borne by other members. We also consider it appropriate the responsible entity ensures that any purchase money paid to an associate is treated in the same way and subject to the same protections as if the money was paid to the responsible entity.

Refund of all money if cooling-off rights are exercised

- 56 If the consumer decides not to proceed with the purchase of an interest in a time-sharing scheme, condition 47(b) of PF 209 requires the operator to return all money given. This includes any administrative or other fees.
- 57 We have imposed this condition to address a specific risk with time-sharing schemes—that is, to protect consumers from the effects of pressure-selling tactics. We consider that the burden of any costs should be borne by the operator and not the consumer.
- 58 We are proposing to require that if the responsible entity facilitates financing for the applicant to acquire an interest, the responsible entity must ensure that any amounts paid in relation to the finance must also be refunded on exercise of cooling-off rights by the applicant. We consider it is important that all money paid to the responsible entity is refunded.

Additional requirements on advice and content of cooling-off statement

- 59 We are proposing to require that if the AFS licensee provides financial product advice orally to a person in connection with the acquisition of an interest, the advice must include an oral explanation of the cooling-off rights available and of the fees and costs of acquiring an interest. We consider that this is key information that should be provided to a person as part of the advice.

The 30% limit on deposits

- 60 Condition 49(c) of PF 209 requires that any deposit for the purchase or issue of an interest in a time-sharing scheme be less than 30% in value of the total purchase or issue price. The policy underlying this condition is to protect consumers from taking on the development risk associated with the building of the property.
- 61 Consistent with the policy rationale, we are proposing to clarify that the 30% limit on deposits only applies if the interest being acquired relates to property development, or part of a property development, which is not ready for occupation.

Record keeping of cooling-off statements

Condition 47(a) of PF 209 currently requires records to be maintained of all people to whom cooling-off statements have been given. We consider that this is burdensome in circumstances where the person does not acquire an interest, but remains important in circumstances where the person does acquire an interest and triggers the cooling-off rights available.

Additional feedback on AFS licence conditions*Sales practices and cooling-off*

62 We are seeking feedback on:

- (a) your experience with how time-sharing interests are sold, including financing arrangements;
- (b) whether time-share sales practices involve unsolicited meetings or telephone calls and, if so, whether any additional restrictions or obligations should be imposed on AFS licensees in relation to these practices to ensure that consumers understand that they are acquiring an interest in a time-sharing scheme and are not misled;

Note: An offer to issue or sell an interest in a time-sharing scheme must not be made, in the course of, or because of, an unsolicited meeting or telephone call: s992AA. In [Regulatory Guide 38](#) *The hawking provisions* (RG 38) at A2.1 we set out our view that, for an offer to be treated as solicited, there would have to be a positive, clear and informed request from a consumer. In our view, the consumer would need to request a meeting or telephone discussion about acquiring a time-share for the offer not to be prohibited under s992AA. This also applies in relation to the initial contact with the consumer. We are seeking feedback on whether the existing restrictions are working effectively or whether any additional protections are required.

- (c) whether the current cooling-off requirements are working effectively;

Note: Under [CO 02/315] the current cooling-off period is seven days for members of the Australian Timeshare Holiday Ownership Council (ATHOC) and 14 days for all other operators. We have allowed a shorter cooling-off period for ATHOC members because they are bound by the ATHOC Code of Practice.

- (d) whether there need to be changes to the current cooling-off requirements to provide additional time until the applicant has returned to their residence or where the applicant has questions; and
- (e) whether an opt-in cooling-off regime would be preferable to the current opt-out regime. This would shift the onus to the AFS licensee to provide a refund of all money paid unless they obtain an additional confirmation from the applicant within the prescribed timeframe that they wish to proceed with the acquisition of the interest in the time-sharing scheme.

Details of charges and levies

63 We are seeking feedback on whether the requirement in condition 48(b) of PF 209 to give full particulars of the composition and calculation of all

continuing charges and levies to members should be replaced with an obligation to provide members with the annual budget, together with a summary of key expense categories and the percentage of expenditure for each category, with the levy notice—to simplify the disclosure, while still ensuring there is sufficient transparency to members of charges and levies.

Note: We impose condition 48(b) because we consider it is important for owners to understand their liability for charges and levies and any changes in those charges and levies.

Deduction of costs on cooling-off

- 64 We are seeking feedback on whether actual administrative costs that are incurred as a result of an applicant exercising their cooling-off rights under condition 47(b) should be able to be deducted from the money refunded to the applicant. Consistent with the policy rationale for this condition, we are not proposing to facilitate the deduction of marketing expenses.

Incorporating modifications to the enhanced fee disclosure requirements

Background

- 65 Schedule 10 to the Corporations Regulations was introduced in 2005 and sets out requirements for the disclosure of fees and costs of managed investment products in PDSs. The PDS must include:
- (a) a standardised fees and costs template (cls 201–202A of Sch 10);
 - (b) certain additional explanations of fees and costs (cl 209 of Sch 10);
 - (c) an example of annual fees and costs (cls 210–212 of Sch 10); and
 - (d) a boxed consumer advisory warning (cls 221–222 of Sch 10).
- 66 [Regulatory Guide 97](#) *Disclosing fees and costs in PDSs and periodic statements* (RG 97) provides guidance on disclosing fees and costs in PDSs. It states that we acknowledge that, in limited circumstances, some tailoring of the fees and costs template and the example of annual fees and costs may be appropriate to avoid the PDS being misleading: see RG 97.136.
- 67 RG 97 gives guidance on adapting the format of the worked example where appropriate. It also states that the consumer advisory warning can be excluded for certain managed investment products when the structure of the product negates the relevance of having a consumer advisory warning because there is no fund from which fees and costs are paid (e.g. time-sharing schemes: cls 221(2) and 222 of Sch 10).

Proposal

- B7** To promote comparability and consumer understanding, we propose to modify the enhanced fee disclosure requirements that apply to the responsible entity and to incorporate the modifications in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper) by requiring disclosure of the following information in a separate section of the PDS (which may include the loose-leaf price list) in a form we will prescribe:
- (a) the consideration to acquire the interest;
 - (b) the levies payable by a member;
 - (c) any other fees or costs payable by members in connection with their interest or to obtain access to accommodation;
 - (d) if the responsible entity takes any steps to facilitate finance to the member to acquire the interest:
 - (i) any upfront payments required to obtain the finance; and
 - (ii) information on the ongoing financing costs such as the range of interest rates and loan terms that are available (subject to finance approval);
 - (e) an example of the annual costs a member could be paying on average for a typical accommodation (including with financing, if financing is facilitated) over a 10-year period for their interest; and
 - (f) the periodic statement content that will be provided to investors for each reporting period.

Your feedback

- B7Q1 Do you agree with the proposal? If not, please provide reasons.
- B7Q2 Please provide details of any costs or benefits that may result from the proposal. If possible, please quantify.
- B7Q3 Do you agree with the terms used to describe the fees and costs and the definitions? If not, please provide reasons.
- B7Q4 Are there any additional fees or costs that should be included in the template for fees and costs? If so, please provide details.
- B7Q5 Do you think a different standardised format or template for information on the purchase price, levies, and fees and costs would better assist consumers to understand the costs of acquiring a time-sharing interest? If so, please provide your suggestions.
- B7Q6 Is there any other information you think would be useful to include in the additional explanation of fees and costs? If so, please provide details.
- B7Q7 Is there another example of annual costs that you think would better illustrate to consumers the costs of acquiring a time-sharing interest? If so, please provide details.

- B7Q8 Do you agree with 10 years as the timeframe for the example of the annual costs or do you think another timeframe is more useful? If so, please specify the timeframe and provide reasons.
- B7Q9 Do you agree with the template for the periodic statement for disclosure of fees and costs during the reporting period? If not, please provide reasons.
- B7Q10 Are there any additional items that should be included in the periodic statement for disclosure of fees and costs (e.g. in the circumstance of a forfeited interest)? If so, please provide details.
- B7Q11 Are there any additional requirements relating to fees and costs or information about fees and costs that would assist consumers? If so, please provide details.
- B7Q12 What transitional period is required to comply with the proposal? Please provide reasons.
- B7Q13 Should there be an additional transitional period for [Class Order \[CO 14/1252\]](#) *Disclosing fees and costs in Product Disclosure Statements and periodic statements* for time-sharing schemes during the transition period for the proposal? If so, please provide reasons.

Rationale

- 68 Given the nature of a time-sharing scheme and the types of fees and costs involved, we consider that our proposed alternative fee disclosure may better achieve the intended effect of Sch 10 to the Corporations Regulations. A key issue for time-sharing schemes is that applicants are informed of any upfront and ongoing costs that will apply in connection with acquiring an interest in the scheme.
- 69 We consider that the proposed disclosure is more meaningful to consumers and promotes greater consistency across time-sharing schemes. Because the disclosure can be provided in the loose-leaf price list, it can be easily updated.

Summary of financing costs

- 70 We are proposing that a summary of the financing costs be included in the PDS as part of the fees and costs disclosure in circumstances where the responsible entity offers to facilitate a financing arrangement in connection with the purchase of a time-sharing interest. We acknowledge that a consumer will separately receive detailed information about the cost of financing and the particular terms of the financing arrangement from the financier; however, we consider that it would be useful for a consumer to consider key information about the potential financing costs together with information on the costs of a time-sharing scheme.

Example of annual costs over 10-year period

- 71 We consider it would assist consumers to be provided, in the fees and costs disclosure, with an example of the average annual costs a member would be paying for a typical accommodation (including with financing, if financing is facilitated). This would enable a consumer to see a worked example and to consider this against alternative holiday arrangements. We have selected a period of 10 years as the period to base the example on to demonstrate what the ongoing costs may be.

C Amending ASIC class order on financial requirements: [CO 13/760]

Key points

We are proposing to amend Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*, which outlines the financial requirements that apply to responsible entities of time-sharing schemes.

Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*

Background

- 72 Responsible entities of time-sharing schemes must meet certain financial requirements to hold an AFS licence, including holding a certain level of net tangible assets (NTA). The required NTA must comprise a certain level of cash or cash equivalents and liquid assets. The financial requirements for responsible entities are set out in [CO 13/760] and in [Regulatory Guide 166 Licensing: Financial requirements](#) (RG 166).
- 73 Generally, a responsible entity of a time-sharing scheme must hold, at all times, a minimum NTA of the greater of:
- (a) \$150,000;
 - (b) 0.5% of the average value of scheme property of the registered scheme(s) operated by the responsible entity up to \$5 million NTA; or
 - (c) 10% of the responsible entity's average revenue.
- 74 We allow a responsible entity of a time-sharing scheme with this level of NTA to hold the following scheme property:
- (a) levies of a time-sharing scheme that are held in a trust account (the account must be audited twice annually by a registered auditor and a report from the auditor provided to the responsible entity); and
 - (b) land or other real property to which the time-sharing scheme relates.
- These assets fall within the definition of 'special custody assets'.
- 75 We do not generally allow responsible entities of other types of registered managed investment schemes to hold this type of scheme property without holding, at all times, minimum NTA of the greater of \$10 million or 10% of the responsible entity's average revenue.

76 Given the nature of the schemes and the property held, we think that there is a low risk of loss or misappropriation of real property or levies for time-sharing schemes due to custodial failure.

Proposal

c1 We propose to make the following amendments to [\[CO 13/760\]](#):

- (a) expand the definition of 'special custody assets' to cover the assets of points-based time-sharing schemes comprising interests in real property and interests in other time-sharing schemes that are registered or are an exempt time-sharing scheme; and
- (b) reduce the frequency of audits of the trust account as required in paragraph (g) of the definition of 'special custody assets' from twice a year to once a year.

Your feedback

C1Q1 Do you agree with the proposal to expand the definition of special custody assets? If not, please provide reasons.

C1Q2 Are there any other assets of time-sharing schemes that you consider should be included in the definition of special custody assets? If so, please provide reasons.

C1Q3 Do you agree with the proposal to reduce the frequency of the audit of the trust account? If not, please provide reasons.

C1Q4 Do you think an audit of the points for points-based schemes should also be included in the annual audit? If not, please provide reasons.

C1Q5 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

C1Q6 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.

Rationale

Definition of special custody assets

77 We are proposing to amend the definition of special custody assets to reflect the assets of certain time-sharing schemes and to reduce cost burdens.

78 The assets of time-sharing schemes traditionally comprised land or other real property owned by the scheme as well as the levies account. Over time there has been a growth of points-based time-sharing schemes. In seeking to provide a wider variety of accommodation options for members, points-based schemes also acquire interests in real property and interests in other registered or exempt time-sharing schemes.

79 We are proposing to expand the definition of special custody assets because we consider these assets are subject to the same low degree of custodial risk. This is consistent with case-by-case relief granted.

Audit requirement

80 We are proposing to reduce the frequency of the audit of the trust account to once a year. We consider that the risk of loss or misappropriation of these assets is low and there is little additional benefit for members to have two audits a year. We consider that this will produce cost savings to operators, which will ultimately be passed on to members, without compromising consumer protection.

Additional feedback: Audit of 'points'

81 We are also seeking your views on whether it is appropriate for the annual audit to include an audit of the 'points' of the points-based time-sharing schemes in addition to an audit of the trust account. We consider this may help ensure there has been no misappropriation and the points are properly accounted for.

D ASIC pro formas and amending relief granted

Key points

We are proposing to withdraw the following pro formas for new applications and consider the applications and the terms of any relief on a case-by-case basis:

- Pro Forma 205 *Time-sharing schemes formerly exempt under state laws* (PF 205);
- Pro Forma 206 *Time-sharing schemes—Chapter 5C relief* (PF 206); and
- Pro Forma 207 *Title-based time-sharing schemes* (PF 207).

We are also proposing to amend:

- the case-by-case relief granted to existing operators based on PF 206 and PF 207; and
- PF 208 so that it applies only to exempt time-sharing schemes and reflects the wording of the template cooling-off statements for registered time-sharing schemes under the new instrument.

PF 205, PF 206, PF 207 and PF 208

Background

- 82 We have granted case-by-case relief from s601ED to exempt time-sharing schemes based on ASIC pro formas. These include:
- (a) time-sharing schemes exempt under state law where relief is granted based on PF 205;
 - (b) member-controlled clubs where relief is granted based on PF 206; and
 - (c) title-based time-sharing schemes where relief is granted based on PF 207.
- 83 Further background information and explanations of the rationale for the relief are set out in RG 160.
- 84 PF 208 sets out the ASIC-approved form of the cooling-off statement for time-sharing schemes, which, for registered time-sharing schemes, we are proposing to incorporate into ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX: see proposal B5.

Proposal

D1 We propose to:

- (a) withdraw PF 205, PF 206 and PF 207 and instead consider any new applications seeking relief similar to these pro formas, and the terms of any relief, on a case-by-case basis;

Note: PF 205, PF 206 and PF 207 are available in *ASIC Digest* but not on our website, and so the current versions are attached to this paper for reference as Attachments 2, 3 and 4, respectively.

- (b) following writing to existing operators relying on case-by-case relief based on PF 206 and PF 207, make the following amendments to the relief granted:

- (i) for existing operators relying on relief based on PF 206—a reduction in the frequency of the audit of the trust account from twice a year to once a year;
- (ii) for existing operators relying on relief based on PF 206 and PF 207—an increase in the voting and ownership restrictions from 10% to 20% on the following conditions: at least 90% of the interests have been issued; the increase and consequential amendments to the constitution are approved by a special resolution of members; and, where the scheme offers forfeited interests for sale, they are first offered to other members before being acquired by the operator, manager, promotor, developer or an associate of them; and
- (iii) for existing operators relying on relief based on PF 206 and PF 207—a restriction on a member voting where the member is the operator, manager, promotor, developer or an associate of them, and has an interest in a resolution other than in their capacity as a member; and

- (c) update PF 208 so that it only applies to exempt time-sharing schemes and simplify the drafting (at Attachment 5 to this consultation paper).

Note: We are proposing to include the template cooling-off statement for registered time-sharing schemes in ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX: see proposal B5.

Your feedback

D1Q1 Do you agree with proposal D1(a) to consider new applications seeking relief similar to that under PF 205, PF 206 and PF 207 (and the terms of any relief) on a case-by-case basis? If not, please provide reasons.

D1Q2 Do you agree with our approach in proposal D1(b) to make amendments to case-by-case relief granted based on PF 206 and PF 207 following writing to existing operators relying on the relief? If not, please provide reasons.

D1Q3 Do you agree with proposal D1(b)(i) to reduce the frequency of the audit of the trust account under PF 206? If not, please provide reasons.

- D1Q4 Do you agree with proposal D1(b)(ii) to increase the voting and ownership restrictions under PF 206 and PF 207 from 10% to 20%? If not, please provide reasons and comment on what might be a more appropriate percentage.
- D1Q5 Do you agree with proposal D1(b)(iii) to include a voting restriction to manage conflicts? If not, please provide reasons.
- D1Q6 Do you agree with the proposed amendments to PF 208 in proposal D1(c)? If not, please provide reasons.
- D1Q7 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.
- D1Q8 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.
- D1Q9 Are there any additional protections to assist consumers that we should include in the relief based on PF 205, PF 206 and PF 207 or the cooling-off statement in PF 208? If so, please provide reasons.

Rationale

New applications seeking relief based on PF 205, 206 and 207

- 85 There does not appear to be a continuing need or significant demand for the relief based on PF 205, PF 206 and PF 207. In addition, the pro formas do not reflect current drafting practices. We consider it is more appropriate to assess any new application for similar relief (and the terms of any relief) on a case-by-case basis. As a consequence, we are proposing to withdraw PF 205, PF 206 and PF 207.

Reducing the frequency of audits for member-controlled clubs: PF 206

- 86 One of the conditions of relief for member-controlled clubs is that the club, or person or entity engaged by the club for management, maintain a trust account audited twice a year by a registered company auditor. This condition is designed to protect members from loss or misappropriation of scheme property.
- 87 For existing operators relying on the relief based on PF 206, we are proposing to reduce the frequency of the audit to once a year, which is consistent with the annual audit requirements imposed on registered schemes. We consider that this will produce cost savings to operators, which will ultimately be passed on to members, without compromising consumer protection.

Increasing the voting and ownership restrictions to 20%: PF 206 and PF 207

88 Relief is currently only available to member-controlled clubs and title-based time-sharing schemes where at least 90% of the interests have been issued and are held by a person other than the time-sharing developer, manager or promoter or an associate of them. The purpose of this condition is to preserve members' control over the day-to-day operation of the time-sharing scheme.

89 We understand there will generally be a limited secondary market for interests in time-sharing schemes and that the only willing purchaser may be a conflicted party. The proposed amendment, for existing operators relying on the relief based on PF 206 or PF 207, will enable the voting and ownership percentages to be increased to a level that is consistent with other thresholds on control under the Corporations Act in circumstances where non-conflicted members approve the changes.

Restriction on voting: PF 206 and PF 207

90 For existing operators relying on the relief based on PF 206 or PF 207, we are proposing to impose a voting restriction on resolutions where the member is the operator, manager, promoter, developer or an associate of them and has an interest in a resolution other than in their capacity as a member. This is similar to the restriction that exists for registered schemes under s253E of the Corporations Act and will assist investor protection, particularly in light of the increase in voting and ownership limits also proposed.

Updates to the cooling-off statement under PF 208

91 Because the requirement for cooling-off statements to be provided to applicants in the prescribed ASIC form is also applicable to exempt time-sharing schemes, we are proposing to continue to outline the required template in PF 208 for these schemes. We consider it is appropriate to adopt similar drafting to the template that applies to registered time-sharing schemes in the new instrument: see paragraphs 44–46.

E Updating ASIC guidance

Key points

We are proposing to update [Regulatory Guide 160](#) *Time-sharing schemes* (RG 160) to:

- reflect the changes proposed in Sections B, C and D of this paper; and
- provide additional guidance in some areas, including guidance on our expectations for compliance by operators and promoters of time-sharing schemes based on our regulatory experiences.

Regulatory Guide 160 *Time-sharing schemes*

Background

92 RG 160 sets out our approach to regulating time-sharing schemes under the Corporations Act and discusses the relief we give for time-sharing schemes.

Proposal

- E1 We propose to update RG 160 to:
- (a) reflect consistency with the changes to the class orders, pro formas, AFS licence conditions, the financial requirements of responsible entities and the enhanced fee disclosure requirements;
 - (b) update legislative and policy references and definitions;
 - (c) provide additional guidance on our expectations for compliance with the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) based on our experiences with time-sharing schemes;
 - (d) amend the statement in RG 160.54 that the income from rental pools is used primarily to offset against scheme levies;
 - (e) clarify that the applicant must sign the cooling-off statement in a form approved by ASIC;
 - (f) clarify that the AFS licensee obligations for the responsible entity to pay the same charges for any unsold interests as members would be required to pay includes ensuring that another person as agent makes the payment; and
 - (g) remove references to granting relief from the managed investment and licensing provisions (and further extending the transition period) to time-sharing schemes regulated under the prescribed interest provisions of the old Corporations Law (now repealed).

We are also proposing to maintain our current approach to the resale of interests in a time-sharing scheme (see RG 160.86–RG 160.91) and to

non-accommodation-based time-sharing schemes (see Section D of RG 160).

Your feedback

- E1Q1 Is our guidance in RG 160 on time-sharing schemes helpful in understanding obligations under the Corporations Act and our approach to granting substantive relief from the obligations?
- E1Q2 Do you agree with the proposed amendments to the guidance? If not, please provide reasons.
- E1Q3 Do you agree with the proposal to maintain the current approach in RG 160 for the resale of interests in a time-sharing scheme? If not, please provide reasons.
- E1Q4 Do you agree with the proposal to maintain the current approach in RG 160 for non-accommodation-based time-sharing schemes? If not, please provide reasons.
- E1Q5 Is there any additional guidance we should provide in RG 160?
- E1Q6 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.

Rationale

- 93 Our preliminary view is that it is appropriate to continue to provide guidance to operators and promoters of time-sharing schemes in RG 160. We consider it will be necessary to update RG 160 to reflect consistency with the proposed changes to the class orders, pro formas, AFS licence conditions, the financial requirements of responsible entities and the enhanced fee disclosure requirements.

Additional guidance on obligations under the Corporations Act and ASIC Act

- 94 We consider it appropriate to include additional guidance for operators and promoters of time-sharing schemes in relation to our expectations for compliance with their obligations under the Corporations Act and the ASIC Act. This includes guidance on our expectations for:
- (a) the content of the PDS to comply with Pt 7.9 of the Corporations Act;
 - (b) marketing and promotional material issued in connection with the scheme to ensure that it is not misleading or deceptive;
 - (c) the provision of any financial product advice to consumers to comply with the obligations under the Corporations Act and ASIC policy, including:
 - (i) compliance with the obligations under Pts 7.7 and 7.7A of the Corporations Act to act in the best interests of the client when providing the advice (best interests duty), to provide financial

product advice that is appropriate to the client's relevant personal circumstances and the giving of a compliant Statement of Advice (SOA), in respect of personal advice; and

- (ii) for AFS licensees to ensure that all natural persons who provide financial product advice on their behalf meet the minimum training standards in [Regulatory Guide 146](#) *Licensing: Training of financial product advisers* (RG 146);

Note: Effective from 24 September 2012, Sections D and E of RG 146 are under review. The review will enable ASIC to explore options pending final policy positions following our consultation relating to RG 146.

- (d) conduct in approaching consumers, and at meetings and seminars attended by consumers, to ensure that this does not involve unlawful hawking, misleading or deceptive statements, or unconscionable conduct; and
- (e) compliance with obligations of an AFS licensee under proposed notional s912AE of the new instrument.

Treatment of income from rental pools

- 95 RG 160.54 currently outlines that the income of the rental pool is used primarily to offset the scheme levies imposed on members. Based on feedback from industry, we understand that industry practice is that the income from rental pools is generally paid to members. We are proposing to update RG 160 to reflect current industry practice.

Signed acknowledgement of cooling-off rights

- 96 The obligations of an AFS licensee under proposed notional s912AE continue to require that the licensee:
- (a) ensures that an interest in the scheme is not issued or sold unless the applicant has provided written acknowledgement of receipt of the cooling-off statement in the form approved by ASIC; and
 - (b) maintains a record of people to whom cooling-off statements have been provided (where the person acquires an interest), including the person's signed written acknowledgement of receipt.
- 97 We understand there has been confusion in the industry as to whether the applicant's acknowledgement needs to be on the cooling-off statement itself or whether it can be in a separate document (i.e. an application form). Our view is that the applicant should sign the cooling-off statement in the form approved by ASIC, rather than a separate form, to ensure consistency across the industry and reduce the risk of the notice being overlooked.
- 98 We are proposing to clarify in RG 160 that the applicant must sign the cooling-off statement in the form approved by ASIC.

Payment of continuing charges for unsold interests

99 The obligations of an AFS licensee under proposed notional s912AE of the new instrument continue to require that the responsible entity pay the same continuing charges for any unsold interests as members would be required to pay for the same interest in the scheme. We understand that in practice the responsible entity may arrange for an agent to make the payment.

100 We are proposing to clarify in RG 160 that ‘pay’ includes ‘cause to be paid’ and, therefore, if the constitution requires another party to pay that is acting as the responsible entity’s agent, this obligation is satisfied. We do not have issues with this approach because the policy reason that costs are not borne by members remains satisfied. The responsible entity will also remain responsible for ensuring the payment is made.

Prescribed interest schemes

101 We previously gave some time-sharing schemes regulated under the prescribed interest provisions of the old Corporations Law (now repealed) relief from the managed investment and licensing provisions to provide an extension of time to become regulated under the Corporations Act.

102 Based on applications for relief, we are not aware that there is a continuing need for any relief to be granted to time-sharing schemes that were regulated under the prescribed interest provisions and have not made the transition to the Corporations Act. In light of this, we are proposing to remove the references to granting relief to fixed-term prescribed interest schemes in RG 160.63–RG 160.71.

Additional feedback*Resale of time-sharing interests*

103 We have granted case-by-case relief from the licensing provisions for the resale of time-sharing interests consistent with our current policy in RG 160.86–RG 160.91.

104 Based on applications for relief received, there does not appear to be significant demand for relief for the resale of interests. In light of this, we are proposing to maintain the current approach outlined in RG 160.86–RG 160.91 and consider any applications for relief on a case-by-case basis.

Non-accommodation-based time-sharing schemes

105 We have granted case-by-case relief from the managed investment and licensing provisions to a small number of operators for arrangements such as boating and aviation syndicates consistent with our current guidance in Section D of RG 160.

106 The conditions of relief have included that a PDS be issued outlining specified content, including:

- (a) a statement that the product is not an investment product;
- (b) details of any withdrawal rights;
- (c) a summary of the material terms and agreements that apply to the arrangement;
- (d) a statement that the operator and related parties do not hold an AFS licence;
- (e) a statement that the scheme is not a registered scheme subject to the obligations under Ch 5C of the Corporations Act; and
- (f) a statement that the operator must take reasonable steps to become and remain a member of an external dispute resolution scheme.

107 Based on applications for relief received, there does not appear to be significant demand for relief for non-accommodation-based arrangements. In light of this, we propose to maintain the current approach outlined in Section D of RG 160 and to consider any applications for relief on a case-by-case basis.

F Regulatory and financial impact

108 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) reducing the burden on operators of time-sharing schemes where appropriate; and
- (b) providing adequate regulatory safeguards to assist members of time-sharing schemes.

109 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 RIS.

110 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.

111 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.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATHOC	Australian Timeshare and Holiday Ownership Council
best interests duty	The duty to act in the best interests of the client when giving personal advice to a client as set out in s961B(1) of the Corporations Act
cl 221 (for example)	A clause of Sch 10 to the Corporations Regulations (in this example numbered 221), unless otherwise specified
[CO 14/26] (for example)	An ASIC class order (in this example numbered 14/26) 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
enhanced fee disclosure regulations	Sch 10 to the Corporations Regulations, as inserted by the Corporations Amendment Regulations 2005 (No. 1)
exempt time-sharing scheme	A time-sharing scheme covered by an exemption from s601ED specified by ASIC in writing and published in the Gazette
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is the definition contained in s766B of the Corporations Act.</p>

Term	Meaning in this document
licensing provisions	The provisions set out in Pt 7.6 of the Corporations Act and in the Corporations Regulations
managed investment provisions	The provisions set out in Ch 5C of the Corporations Act and in the Corporations Regulations
NTA	Net tangible assets
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
product disclosure provisions	The provisions set out in Pt 7.9 of the Corporations Act and in the Corporations Regulations
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 under Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
registered scheme or scheme	A managed investment scheme, as defined in s9 of the Corporations Act, registered with ASIC
responsible entity	A responsible entity of a registered scheme, as defined in s9 of the Corporations Act
RG 160 (for example)	An ASIC regulatory guide (in this example numbered 160)
RIS	Regulation Impact Statement
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
Sch 10 (for example)	A schedule to the Corporations Regulations (in this example numbered 10)
Statement of Advice (SOA)	A document that must be given to a client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect
time-sharing scheme	A scheme, undertaking or enterprise, whether in Australia or elsewhere: <ul style="list-style-type: none"> • in which participants are, or may become, entitled to use, occupy or possess the property for two or more periods; and • that operates for a period of not less than three years

List of proposals and questions

Proposal	Your feedback
<p>B1 To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 00/2460] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [CO 00/2460].</p> <p>The changes proposed are to:</p> <ul style="list-style-type: none"> (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument; (b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool); (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. 	<p>B1Q1 Do you rely on the relief in [CO 00/2460]? Are you aware of widespread reliance on [CO 00/2460]?</p> <p>B1Q2 Do you agree with the proposal to continue the relief in [CO 00/2460] and with the terms of the relief? If not, please provide reasons.</p> <p>B1Q3 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>B1Q4 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p> <p>B1Q5 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p>
<p>B2 To preserve its effect beyond the sunset date of 1 April 2017, we propose to continue the relief currently given by [CO 02/315] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [CO 02/315].</p> <p>The changes proposed are to:</p> <ul style="list-style-type: none"> (a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument; (b) include a new requirement that relief is 	<p>B2Q1 Do you rely on the relief in [CO 02/315]? Are you aware of widespread reliance on [CO 02/315]?</p> <p>B2Q2 Do you agree with the proposal to continue the relief in [CO 02/315] and with the terms of the relief? If not, please provide reasons.</p> <p>B2Q3 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>B2Q4 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p> <p>B2Q5 Are there any additional protections to assist consumers that we should include in the relief? If so, please provide reasons.</p>

Proposal	Your feedback
<p>only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);</p> <p>(c) remove conditions that duplicate the AFS licence conditions under PF 209;</p> <p>(d) reflect current drafting practice and update the format of the current document;</p> <p>(e) simplify the drafting to give greater clarity;</p> <p>(f) update legislative references and definitions; and</p> <p>(g) correct any minor drafting errors.</p>	
<p>B3 To preserve its effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 03/104] in a new legislative instrument that reflects current drafting practice, with some changes: see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [CO 03/104].</p> <p>The changes proposed are to:</p> <p>(a) combine the class order with the other class orders in this section, and the other amendments proposed in this section, and update the name of the legislative instrument;</p> <p>(b) include a new requirement that relief is only available if the time-sharing scheme is not promoted as a means of generating a financial return (other than by way of a rental pool);</p> <p>(c) reflect current drafting practice and update the format of the current document;</p> <p>(d) simplify the drafting to give greater clarity;</p> <p>(e) update legislative references and definitions; and</p> <p>(f) correct any minor drafting errors.</p>	<p>B3Q1 Do you rely on the relief in [CO 03/104]? Are you aware of widespread reliance on [CO 03/104]?</p> <p>B3Q2 Do you agree with the proposal to continue the relief in [CO 03/104] and with the terms of the relief? If not, please provide reasons.</p> <p>B3Q3 In relation to the price that the interest is sold for:</p> <p>(a) Should the responsible entity be required to sell the forfeited interest following the approach outlined for shares in s254Q of the Corporations Act (other than s254Q(1), (9) and (13))—that is, a public auction process?</p> <p>(b) Should the current requirement for the responsible entity to sell the interests using the price specified in the PDS (if issued in the last 12 months) or at a fair market price be retained?</p> <p>(c) Is there an alternative sale process that is preferable to the above? Please provide details.</p> <p>B3Q4 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>B3Q5 Does this approach raise any consumer protection issues? If so, please provide reasons.</p> <p>B3Q6 Are there any additional protections to assist consumers that we should include in the relief (e.g. should there be a restriction on any payments being required to be made by members after they have forfeited an interest or are any additional disclosures required to assist consumers)? If so, please provide reasons.</p>

Proposal	Your feedback
<p>B4 We propose to:</p> <p>(a) for existing operators of a rental pool that rely on [CO 02/237]—reduce the frequency of the audit of the trust account from twice a year to once a year and provide transitional relief to effectively continue the relief under [CO 02/237] for those operators (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [CO 02/237]); and</p> <p>(b) repeal [CO 02/237] unless we receive feedback that the relief is still necessary for the operation of new rental pools.</p> <p>Note: Given the transitional relief proposed, the repeal will not affect existing operators relying on [CO 02/237].</p>	<p>B4Q1 Do you agree with the proposal to provide transitional relief to existing operators of rental pools relying on [CO 02/237]? If not, please provide reasons.</p> <p>B4Q2 Do you agree with the proposal in the transitional relief to reduce the frequency of the audits of the trust account? If not, please provide reasons.</p> <p>B4Q3 Do you agree with the proposal to repeal [CO 02/237]? If not, please provide reasons.</p> <p>B4Q4 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>B4Q5 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p>
<p>B5 We propose to:</p> <p>(a) for entities that are dealing in interests or operating a registered time-sharing scheme—incorporate the template cooling-off statement, currently in PF 208, into the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper); and</p> <p>(b) simplify the drafting of the template cooling-off statement in the new instrument to give greater clarity to consumers about how to exercise their cooling-off rights.</p> <p>Note: For exempt time-sharing schemes, we are proposing to retain PF 208, but to amend it to reflect the simplified template cooling-off statement: see proposal D1.</p>	<p>B5Q1 Do you agree with our proposal to incorporate the template cooling-off statement under PF 208 into the new instrument for entities that are dealing in interests or operating a registered time-sharing scheme? If not, please give reasons.</p> <p>B5Q2 Do you think a different template or approach would better assist consumers to understand their cooling-off rights? If so, please provide your suggestions.</p>
<p>B6 We propose to:</p> <p>(a) consolidate all of the conditions for AFS licensees that operate registered time-sharing schemes and incorporate them in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper);</p> <p>(b) modify the Corporations Act to introduce notional s912AE, which outlines the</p>	<p>B6Q1 Do you agree with our proposal to include the conditions for AFS licensees that operate registered time-sharing schemes in the new instrument? If not, please provide reasons.</p> <p>B6Q2 Do you agree with our proposal to also continue to impose obligations in relation to the provision of a PDS, application form and cooling-off rights on AFS licensees that deal in interests in time-sharing schemes? If not, please provide reasons.</p>

Proposal	Your feedback
<p>obligations on AFS licensees that operate registered time-sharing schemes, and make the following amendments to the existing obligations:</p> <ul style="list-style-type: none"> (i) impose obligations on the responsible entity in relation to the provision of a PDS, application form and cooling-off rights in respect of the issue or sale of an interest. Where there is a PDS for the interest, we also propose to continue to impose these obligations on AFS licensees that deal in interests in registered time-sharing schemes under either the licence conditions or the new instrument; (ii) require that the responsible entity must take all reasonable steps to ensure that its associates comply with the AFS licensee requirements in relation to the provision of a PDS, application and cooling-off rights if an associate offers to sell an interest; (iii) if the responsible entity facilitates financing for the applicant to acquire an interest, require that any amounts paid to the responsible entity in connection with the financing be repaid on exercise of cooling-off rights by the applicant; (iv) if financial product advice is provided to a retail client orally in relation to the acquisition of an interest, require that the responsible entity does not issue or sell to a person unless the oral advice includes an explanation of the cooling-off rights available and the fees and costs payable to acquire an interest; (v) apply the current conditions that apply to charges and levies to interests held by both the responsible entity and its associates; (vi) apply the current conditions that apply to handling of purchase money to money paid to the responsible entity or its associates; (vii) clarify that the 30% limit on deposits for the purchase or issue of an interest in a time-sharing scheme 	<p>B6Q3 Do you agree with the amendments proposed to the existing obligations? If not, please provide reasons.</p> <p>B6Q4 Is any transitional period required to comply with the amendments to the existing obligations? If so, please provide reasons.</p> <p>B6Q5 Please describe your experience with how time-sharing interests are sold. Please give details about the steps involved, including details of any financing arrangements facilitated by the responsible entity to acquire an interest.</p> <p>B6Q6 Do the sales practices involve any unsolicited meetings or telephone calls? If so, should any additional restrictions or obligations be imposed on licensees in relation to these practices to ensure that consumers understand what they are being offered and are not misled?</p> <p>B6Q7 In relation to the current cooling-off rights:</p> <ul style="list-style-type: none"> (a) Do you think the cooling-off rights based on consumers having to opt out to cool off are working? (b) Where the interest is acquired during a period when the applicant was accommodated at the property, should the cooling-off period only commence when the licensee knows or ought to know the applicant would return to their usual residence? (c) If the applicant has questions, should the cooling-off period stop and start afresh from the time that the further information has been provided by the licensee to the applicant? (d) Should the cooling-off rights alternatively be on an opt-in basis—that is, an applicant is deemed to have exercised their cooling-off rights if they do not provide an additional written confirmation to the licensee within a prescribed period? (e) What are the optimal cooling-off arrangements, taking into account the needs of consumers and operators, and how time-sharing interests are sold? <p>B6Q8 Should the current requirement to give full particulars of the composition and calculation of all continuing charges and levies to members be replaced with an obligation to provide members with the annual budget, together with a summary of key expense categories and the percentage of expenditure for each category, with the levy notice? If not, please provide reasons and outline</p>

Proposal	Your feedback
<p>only applies where the scheme interest being acquired relates to property development, or part of a property development, which is not ready for occupation; and</p> <p>(viii) remove the need to keep records in relation to cooling-off statements provided in circumstances where the person does not acquire an interest in the scheme (records would still be required to be maintained for those people who acquire an interest and exercise their cooling-off rights).</p>	<p>the information about future charges and levies that would best assist consumers.</p> <p>B6Q9 Should actual administrative costs incurred be able to be deducted from the money refunded to the applicant on exercise of cooling-off rights by the applicant? If not, please provide reasons. If yes, please outline the type and amount of any costs that would be deducted.</p> <p>B6Q10 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>B6Q11 Does this approach raise any consumer protection issues? If so, please provide reasons.</p> <p>B6Q12 Are there any additional protections to assist consumers that we should include as obligations (e.g. in relation to: hawking; sales practices; deposits; financing arrangements; use and expiry of points; or disclosure of key information such as the ability to resell or exit the scheme)? If so, please provide reasons.</p>
<p>B7 To promote comparability and consumer understanding, we propose to modify the enhanced fee disclosure requirements that apply to the responsible entity and to incorporate the modifications in the new instrument (see draft ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX at Attachment 1 to this consultation paper) by requiring disclosure of the following information in a separate section of the PDS (which may include the loose-leaf price list) in a form we will prescribe:</p> <p>(a) the consideration to acquire the interest;</p> <p>(b) the levies payable by a member;</p> <p>(c) any other fees or costs payable by members in connection with their interest or to obtain access to accommodation;</p> <p>(d) if the responsible entity takes any steps to facilitate finance to the member to acquire the interest:</p> <p>(i) any upfront payments required to obtain the finance; and</p> <p>(ii) information on the ongoing financing costs such as the range of interest rates and loan terms that are available (subject to finance approval);</p>	<p>B7Q1 Do you agree with the proposal? If not, please provide reasons.</p> <p>B7Q2 Please provide details of any costs or benefits that may result from the proposal. If possible, please quantify.</p> <p>B7Q3 Do you agree with the terms used to describe the fees and costs and the definitions? If not, please provide reasons.</p> <p>B7Q4 Are there any additional fees or costs that should be included in the template for fees and costs? If so, please provide details.</p> <p>B7Q5 Do you think a different standardised format or template for information on the purchase price, levies, and fees and costs would better assist consumers to understand the costs of acquiring a time-sharing interest? If so, please provide your suggestions.</p> <p>B7Q6 Is there any other information you think would be useful to include in the additional explanation of fees and costs? If so, please provide details.</p> <p>B7Q7 Is there another example of annual costs that you think would better illustrate to consumers the costs of acquiring a time-sharing interest? If so, please provide details.</p> <p>B7Q8 Do you agree with 10 years as the timeframe for the example of the annual costs or do you think another timeframe is more useful? If so, please specify the timeframe and provide reasons.</p>

Proposal	Your feedback
<p>(e) an example of the annual costs a member could be paying on average for a typical accommodation (including with financing, if financing is facilitated) over a 10-year period for their interest; and</p> <p>(f) the periodic statement content that will be provided to investors for each reporting period.</p>	<p>B7Q9 Do you agree with the template for the periodic statement for disclosure of fees and costs during the reporting period? If not, please provide reasons.</p> <p>B7Q10 Are there any additional items that should be included in the periodic statement for disclosure of fees and costs (e.g. in the circumstance of a forfeited interest)? If so, please provide details.</p> <p>B7Q11 Are there any additional requirements relating to fees and costs or information about fees and costs that would assist consumers? If so, please provide details.</p> <p>B7Q12 What transitional period is required to comply with the proposal? Please provide reasons.</p> <p>B7Q13 Should there be an additional transitional period for Class Order [CO 14/1252] Disclosing fees and costs in Product Disclosure Statements and periodic statements for time-sharing schemes during the transition period for the proposal? If so, please provide reasons.</p>
<p>C1 We propose to make the following amendments to [CO 13/760]:</p> <p>(a) expand the definition of 'special custody assets' to cover the assets of points-based time-sharing schemes comprising interests in real property and interests in other time-sharing schemes that are registered or are an exempt time-sharing scheme; and</p> <p>(b) reduce the frequency of audits of the trust account as required in paragraph (g) of the definition of 'special custody assets' from twice a year to once a year.</p>	<p>C1Q1 Do you agree with the proposal to expand the definition of special custody assets? If not, please provide reasons.</p> <p>C1Q2 Are there any other assets of time-sharing schemes that you consider should be included in the definition of special custody assets? If so, please provide reasons.</p> <p>C1Q3 Do you agree with the proposal to reduce the frequency of the audit of the trust account? If not, please provide reasons.</p> <p>C1Q4 Do you think an audit of the points for points-based schemes should also be included in the annual audit? If not, please provide reasons.</p> <p>C1Q5 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>C1Q6 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p>
<p>D1 We propose to:</p> <p>(a) withdraw PF 205, PF 206 and PF 207 and instead consider any new applications seeking relief similar to these pro formas, and the terms of any relief, on a case-by-case basis;</p> <p>Note: PF 205, PF 206 and PF 207 are available in ASIC Digest but not on our website, and so</p>	<p>D1Q1 Do you agree with proposal D1(a) to consider new applications seeking relief similar to that under PF 205, PF 206 and PF 207 (and the terms of any relief) on a case-by-case basis? If not, please provide reasons.</p> <p>D1Q2 Do you agree with our approach in proposal D1(a) to make amendments to case-by-case relief granted based on PF 206 and PF 207 following</p>

Proposal	Your feedback
<p>the current versions are attached to this paper for reference as Attachments 2, 3 and 4, respectively.</p> <p>(b) following writing to existing operators relying on case-by-case relief based on PF 206 and PF 207, make the following amendments to the relief granted:</p> <p>(i) for existing operators relying on relief based on PF 206—a reduction in the frequency of the audit of the trust account from twice a year to once a year;</p> <p>(ii) for existing operators relying on relief based on PF 206 and PF 207—an increase in the voting and ownership restrictions from 10% to 20% on the following conditions: at least 90% of the interests have been issued; the increase and consequential amendments to the constitution are approved by a special resolution of members; and, where the scheme offers forfeited interests for sale, they are first offered to other members before being acquired by the operator, manager, promotor, developer or an associate of them; and</p> <p>(iii) for existing operators relying on relief based on PF 206 and PF 207—a restriction on a member voting where the member is the operator, manager, promotor, developer or an associate of them, and has an interest in a resolution other than in their capacity as a member; and</p> <p>(c) update PF 208 so that it only applies to exempt time-sharing schemes and simplify the drafting (at Attachment 5 to this consultation paper).</p> <p>Note: We are proposing to include the template cooling-off statement for registered time-sharing schemes in ASIC Corporations (Time-sharing Schemes) Instrument 2016/XX: see proposal B5.</p>	<p>writing to existing operators relying on the relief? If not, please provide reasons.</p> <p>D1Q3 Do you agree with proposal D1(b)(i) to reduce the frequency of the audit of the trust account under PF 206? If not, please provide reasons.</p> <p>D1Q4 Do you agree with proposal D1(b)(ii) to increase the voting and ownership restrictions under PF 206 and PF 207 from 10% to 20%? If not, please provide reasons and comment on what might be a more appropriate percentage.</p> <p>D1Q5 Do you agree with proposal D1(b)(iii) to include a voting restriction to manage conflicts? If not, please provide reasons.</p> <p>D1Q6 Do you agree with the proposed amendments to PF 208 in proposal D1(c)? If not, please provide reasons.</p> <p>D1Q7 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p> <p>D1Q8 Does our proposed approach raise any consumer protection issues? If so, please provide reasons.</p> <p>D1Q9 Are there any additional protections to assist consumers that we should include in the relief based on PF 206 and PF 207 or the cooling-off statement in PF 208? If so, please provide reasons.</p>

Proposal	Your feedback
<p>E1 We propose to update RG 160 to:</p> <ul style="list-style-type: none"> (a) reflect consistency with the changes to the class orders, pro formas, AFS licence conditions, the financial requirements of responsible entities and the enhanced fee disclosure requirements; (b) update legislative and policy references and definitions; (c) provide additional guidance on our expectations for compliance with the Corporations Act and the <i>Australian Securities and Investments Commission Act 2001</i> (ASIC Act) based on our experiences with time-sharing schemes; (d) amend the statement in RG 160.54 that the income from rental pools is used primarily to offset against scheme levies; (e) clarify that the applicant must sign the cooling-off statement in a form approved by ASIC; (f) clarify that the AFS licensee obligations for the responsible entity to pay the same charges for any unsold interests as members would be required to pay includes ensuring that another person as agent makes the payment; and (g) remove references to granting relief from the managed investment and licensing provisions (and further extending the transition period) to time-sharing schemes regulated under the prescribed interest provisions of the old Corporations Law (now repealed). 	<p>E1Q1 Is our guidance in RG 160 on time-sharing schemes helpful in understanding obligations under the Corporations Act and our approach to granting substantive relief from the obligations?</p> <p>E1Q2 Do you agree with the proposed amendments to the guidance? If not, please provide reasons.</p> <p>E1Q3 Do you agree with the proposal to maintain the current approach in RG 160 for the resale of interests in a time-sharing scheme? If not, please provide reasons.</p> <p>E1Q4 Do you agree with the proposal to maintain the current approach in RG 160 for non-accommodation-based time-sharing schemes? If not, please provide reasons.</p> <p>E1Q5 Is there any additional guidance we should provide in RG 160?</p> <p>E1Q6 Please provide details of any costs or benefits that may result from the proposals. If possible, please quantify.</p>
<p>We are also proposing to maintain our current approach to the resale of interests in a time-sharing scheme (see RG 160.86–RG 160.91) and to non-accommodation-based time-sharing schemes (see Section D of RG 160).</p>	