



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 278

# Remaking ASIC class order on reporting requirements for AFS licensees who are natural persons

February 2017

## About this paper

This consultation paper sets out ASIC's proposals to remake our class order on reporting requirements for Australian financial services (AFS) licensees who are natural persons. Under the *Legislative Act 2003*, this class order will expire ('sunset') if not remade.

We are seeking feedback from AFS licensees on our proposals to remake, without significant changes, Class Order [CO 03/748] *Reporting requirements under s989B*, which is due to expire on 1 October 2017.

Note: The draft ASIC instrument is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 278.

### 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 February 2017 and is based on the Corporations Act as at the date of issue.

### Disclaimer

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

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## The consultation process

### Making a submission

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

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

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

Comments should be sent by 20 March 2017 to:

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### What will happen next?

<b>Stage 1</b>	17 February 2017	ASIC consultation paper released
<b>Stage 2</b>	20 March 2017	Comments due on the consultation paper
<b>Stage 3</b>	By 1 October 2017	Commencement of remade instrument

## A Background

### Key points

Legislative instruments, such as class orders, are repealed automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them.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

### Purpose of 'sunseting' legislative instruments

- 1 Under the *Legislation Act*, legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the 10th anniversary of its registration on the Federal Register of 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.

### Our approach to remaking legislative instruments

- 3 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's priorities of promoting investor and consumer trust and confidence and ensuring fair and efficient markets.
- 4 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact, and are subject to sunseting, to ensure:
  - (a) we are able to carefully consider the continuing regulatory and financial impact of the instrument; and
  - (b) the instrument retains its effectiveness in addressing an identified issue or problem.
- 5 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian Government Guide to Regulation](#). We will review, including public

consultation, all class orders that have a significant regulatory impact before the scheduled sunset date. Where our review finds that a class order is not operating effectively and efficiently, we will prepare a RIS to assess any proposed changes to the class order that are not minor and machinery. Where the class order is operating effectively and efficiently, we will remake the instrument without substantive changes.

## B Remaking ASIC class order

### Key points

We are proposing to remake Class Order [CO 03/748] *Reporting requirements under s989B*, which sunsets on 1 October 2017.

We have formed the preliminary view that this class order is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework.

This class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument. The draft ASIC instrument, which reflects the minor amendments proposed in this paper, is available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 278.

### Your feedback

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

## Class Order [CO 03/748] *Reporting requirements under s989B*

### Background

- 7 Under the *Corporations Act 2001* (Corporations Act), an Australian financial services (AFS) licensee must prepare and lodge true and fair profit and loss statements and balance sheets with ASIC each financial year: s989B(1). Where the AFS licensee is a natural person, this may include expenses and revenues that are unrelated to their financial services businesses, such as income from other sources and personal expenses.
- 8 In September 2003, we issued [CO 03/748] to address concerns around the disproportionate burden placed on AFS licensees who are natural persons. [CO 03/748] limits the operation of s989B(1) by granting relief to AFS licensees who are natural persons from the requirement to include in a profit and loss statement any revenues and expenses that do not relate to financial services businesses carried on by the licensees.
- 9 The relief in [CO 03/748] is confined to the preparation of profit and loss statements. An AFS licensee who is a natural person must still prepare a balance sheet, also known as a statement of financial position, which

discloses all of their assets and liabilities, including personal assets and liabilities, and the assets and liabilities of any other business.

## Proposal

**B1** To preserve its effect beyond the sunset date of 1 October 2017, we propose to continue the relief currently given by [CO 03/748] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/XX attached to this consultation paper. You can access the current instrument on [www.legislation.com.au](http://www.legislation.com.au) by clicking on the following direct link: [\[CO 03/748\]](#).

The only changes proposed are to:

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

## Rationale

10 We have reached the preliminary view that [CO 03/748] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.



## 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 <p>Note: This is a definition contained in s761A.</p>
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act <p>Note: This is a definition contained in s761A.</p>
ASIC	Australian Securities and Investments Commission
[CO 14/26] (for example)	An ASIC class order (in this example numbered 14/26) <p>Note: Legislative instruments made from 2015 are referred to as ASIC instruments.</p>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
RIS	Regulation Impact Statement
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect