



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 338

Remaking ASIC class order on parent entity financial statements: [CO 10/654]

February 2021

About this paper

This consultation paper sets out ASIC's proposal to remake our class order on parent entity financial statements. Under the *Legislation Act 2003*, this class order will expire ('sunset') if not remade.

We are seeking feedback from preparers of financial reports on our proposal to remake, without significant changes, [Class Order \[CO 10/654\] Inclusion of parent entity financial statements in financial reports](#), which is due to expire on 1 April 2021.

Note: The draft ASIC instrument is available on our website at www.asic.gov.au/cp under CP 338.

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 9 February 2021 and is based on the Corporations Act as at the date of issue.

Disclaimer

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

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The consultation process

Making a submission

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

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

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

Comments should be sent by 9 March 2021 to:

Douglas Niven
Chief Accountant, Financial Reporting and Audit
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001
email: policy.submissions@asic.gov.au

What will happen next?

Stage 1	9 February 2021	ASIC consultation paper released
Stage 2	9 March 2021	Comments due on the consultation paper
Stage 3	April 2021	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 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 preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the tenth anniversary of its registration on the Federal Register of Legislation. Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

Our approach to remaking legislative instruments

- 3 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's vision of a fair, strong and efficient financial system for all Australians.
- 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 that:
 - (a) we carefully consider the continuing regulatory and financial impact of the instrument; and
 - (b) the instrument retains its effectiveness in addressing an identified issue or problem.
- 5 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian Government Guide to Regulatory Impact Analysis](#). 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 undertake a regulatory impact analysis 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 and without preparing a RIS.

B Remaking ASIC class order

Key points

We are proposing to remake [Class Order \[CO 10/654\]](#) *Inclusion of parent entity financial statements in financial reports*, which sunsets on 1 April 2021.

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.

The 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 under CP 338.

Your feedback

- 6 You are invited to comment on our proposal to remake [\[CO 10/654\]](#), including whether [CO 10/654] is currently operating effectively and efficiently. This proposal is only an indication of the approach we may take and is not our final policy.

Class Order [CO 10/654] *Inclusion of parent entity financial statements in financial reports*

Background

- 7 Certain entities must prepare a financial report and directors' report for each financial year: see s292 in Ch 2M of the *Corporations Act 2001*. The basic contents of the financial report are specified in s295(1) and include the financial statements for the year.
- 8 An individual entity must include the financial statements in its financial report as required by the accounting standards: see s295(2)(a). If the accounting standards require the entity to prepare consolidated financial statements, then the financial report of the entity can only include the consolidated financial statements and cannot also include single entity financial statements: see s295(2)(b).
- 9 If consolidated financial statements are prepared, some financial information about the parent entity as set out under reg 2M.3.01 of the *Corporations Regulations 2001* must be disclosed in those consolidated financial statements.

- 10 Section 303(2) places restrictions on presenting single entity financial statements in half-year financial reports similar to the restrictions for annual financial reports in s295(2).
- 11 [\[CO 10/654\]](#) allows entities to include single entity financial statements in financial reports prepared under Ch 2M of the *Corporations Act 2001*. Examples of circumstances where an entity might apply the relief to include both the consolidated and single entity financial statements in their financial report are:
- (a) where an entity is required to present single entity financial statements by its constitution, other Federal or State/Territory legislation, the Australian Prudential Regulation Authority, another regulator, a lender, or a royalty agreement or other contractual arrangement;
 - (b) where the directors consider the single entity financial statements would provide useful information to the users of the financial report; and
 - (c) where the entity is an Australian financial services (AFS) licensee, see paragraphs 12–13.
- 12 An AFS licensee may be subject to requirements to prepare financial reports under both Ch 2M and Ch 7 of the Corporations Act. An AFS licensee that prepares consolidated financial statements for the purposes of Ch 2M must still prepare a true and fair single entity profit and loss statement and balance sheet for each financial year under Ch 7: see s989B. The requirement for single entity financial statements under Ch 7 is consistent with the financial requirements for AFS licensees, which apply on a standalone basis.
- 13 [\[CO 10/654\]](#) allows AFS licensees to present the consolidated financial statements required under Ch 2M and the single entity financial statements required under Ch 7 in one financial report, rather than preparing two separate financial reports.
- 14 The relief applies to an annual financial report and a half-year financial report. The relief also applies to a concise financial report sent to members under s314.

Proposal

B1 To preserve its effect beyond the sunset date of 1 April 2021, we propose to continue the relief currently given by [\[CO 10/654\]](#) in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/XX attached to this consultation paper. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 10/654\]](#).

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

- 15 We have reached the preliminary view that [\[CO 10/654\]](#) 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 licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
[CO 10/654] (for example)	An ASIC class order (in this example numbered 10/654) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
consolidated financial statements	Financial statements referred to in s295(2)(b) or 303(2)(b) of the Corporations Act that consolidate financial information for an entity and its controlled entities in accordance with accounting standards
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
entity	A company, registered scheme or disclosing entity
reg 2M.3.01	A regulation of the Corporations Regulations (in this case numbered 2M.3.01) unless otherwise specified
RIS	Regulation Impact Statement
s292 (for example)	A section of the Corporations Act (in this example numbered 292), unless otherwise specified
single entity financial statements	Financial statements referred to in s295(2)(a) or 303(2)(a) of the Corporations Act that are for a single entity only and that do not consolidate financial information for the entity's controlled entities
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect