

7 March 2025

Australian Securities and Investments Commission

By email

Dear Sir/Madam,

Re: Feedback on CS 16

It is pleasing to see that ASIC is taking steps to provide additional relief under the reportable situations regime. U Ethical, being a responsible entity, would be particularly interested if ASIC could consider adding section 601FC(5) of the Corporations Act to the list of civil penalty provisions (CPPs) for relief in CS16.

Section 601FC(5) is a CPP. Per section 601FC(1)(h), if a responsible entity breaches the scheme's compliance plan, it would be deemed to have breached section 601FC(5). In such circumstance, the responsible entity has the obligation to report the non-compliance as a reportable situation to ASIC.

Despite ASIC's expectations set out under RG131, the format, language, wordings used in a scheme's compliance plan can vary across responsible entities, depending on their size and complexity. Additionally compliance plans usually contain controls that are operational or repetitive in nature. This could expose responsible entities to a higher possibility of non-compliance with compliance plans naturally.

From an organisational perspective, U Ethical has a well designed and well worded compliance plan which was recently overhauled in conjunction with our external compliance plan auditor. The risk and compliance team also conducts ongoing monitoring of the compliance plan and the business. Through our governance, risk and compliance platform we also issue attestations to each team member listed in our compliance plan. If any anomalies occur, they are followed up with the relevant team member to address issues which may have arisen. These attestations are automatically issued on either a quarterly, monthly or annual basis, and are also reviewed annually by our external auditors during our annual compliance plan audit.

U Ethical also has proactive team members who report any actual or potential incidents to the risk and compliance team, thus providing an additional layer of control. These incidents are reported quarterly to our finance, risk, audit and compliance committee.

We hope ASIC could remove/amend the reporting obligation for minor breaches of compliance plan. We have controls in place to detect issues which may arise from the compliance plan and our business in a timely manner.

If ASIC sees fit to provide relief for minor breaches of the compliance plan, this would substantially reduce our compliance time, efforts and expenses. This would also include reducing expenses for engaging external auditors for reporting the same non-compliance matter to ASIC under section 990K(1).

As a small not for profit fund manager we find the requirements can be quite onerous and expensive.
We do not believe the current requirements will provide any intelligence or added value to ASIC.

If you require any additional information we would be happy to assist.

Yours sincerely,

