



Attachment 4 to CS 11: Draft RG 108—Summary of changes

This table summarises proposed changes to Regulatory Guide 108 *No-action letters* ([RG 108](#)): see the draft regulatory guide (draft RG 108) at Attachment 2 to ASIC’s consultation *Proposed changes to RG 51 and RG 108* ([CS 11](#)).

Note: The table is not an exhaustive list of all wording and structural changes made to improve the drafting.

Table: Summary of changes

Reference in draft RG 108	Proposed changes
Section A General content changes	Reorders existing content in the current RG 108. Moves the more detailed content in the current RG 108 (under the existing headings ‘What is a no-action letter’ and ‘Why ASIC gives no-action letters’) to Section B.
Key points (Section A)	Reworded to state: ‘This guide details how we will deal with requests for no-action letters, including class no-action positions. An applicant should follow the process and provide the information outlined in Section C.’
RG 108.1	Includes a new heading ‘The purpose of no-action letters’ with a simple explanation of the function of a no-action letter.
RG 108.2–RG 108.4	Includes a new heading ‘Why ASIC might give a no-action letter’ with a brief overview of factors that ASIC will have regard to in assessing an application.
Section B General content changes	Includes minor additional content, removal of content and changes to headings.
Key points (Section B)	Reworded to state: ‘A no-action letter is an expression of ASIC’s regulatory intent and is not a form of legal advice or relief. It is specific to a particular set of circumstances and does not have precedent value. In some circumstances, we may give a no-action position that relates to a class of people or a class of conduct i.e. a class no-action position. A no-action letter (including a class no-action position) does not restrict our right to take action in the future and may be withdrawn at any time. It is not intended to affect the rights of third parties to take legal action. In general, we will not publish no-action letters (however, we reserve our right to do so). From time to time, we may publish class no-action positions.’
RG 108.11–RG 108.16	Includes new content under the heading ‘Role of no-action letters’ to provide details of the purpose and limitations of a no-action letter.

Reference in draft RG 108	Proposed changes
RG 108.17	<p>Changes heading from 'No-action letters are not legal opinions' to 'No-action letters are not legal advice'.</p> <p>Removes content under the heading 'Expressions of regulatory intent' in the current RG 108.</p>
RG 108.18	Includes new content under the heading 'No-action letters are not relief'.
RG 108.20	Changes heading from 'ASIC's right to take action is not restricted' to 'ASIC's right to take future action is not restricted'.
RG 108.23	Changes heading from 'Third party actions are not precluded' to 'Third parties are not precluded from taking legal action'.
RG 108.24	Changes heading from 'Correspondence from ASIC that is not a no-action letter' to 'Distinguishing no-action letters from other ASIC correspondence'.
RG 108.25–RG108.26	<p>Introduces content under the heading 'Class no-action positions' that was previously under Section D in the current RG 108 (at RG 108.32).</p> <p>Changes wording in RG 108.26(c) from 'does not preclude third party actions' to 'does not preclude third parties taking legal action'.</p>
RG 108.29	<p>Inserts a separate paragraph on confidentiality and a reference to s127 of the <i>Australian Securities and Investments Act 2001</i>.</p> <p>Adds the following notes:</p> <p>'Note 1: ASIC also has express powers under s25 and s37 to disclose certain information for certain purposes.</p> <p>Note 2: For information about our approach to confidentiality, see Regulatory Guide 103 <i>Confidentiality and release of information</i> (RG 103).'</p>
Section C General content changes	<p>Incorporates the content on class no-action letters in Section D of the current RG 108 (Section D has now been removed to avoid duplication).</p> <p>Reorders existing content in the current RG 108.</p>
Key points (Section C)	<p>Reworded to state:</p> <p>'ASIC will only give a no-action letter or a class no-action position under certain circumstances and when we are of the view that it would serve a clear regulatory purpose, having regard to the:</p> <ul style="list-style-type: none"> • policy and intent of the legislation; • facts at the time of the application; and • factors set out in Table 1. <p>An application for a no-action letter or class no-action position cannot be made on a 'without prejudice' basis, and some applications will not receive a final determination.'</p>

Reference in draft RG 108	Proposed changes
Table 1	<p>In the 'Our policy' section, updates:</p> <ul style="list-style-type: none"> the introductory words to read, 'ASIC has not published any regulatory guidance on a subject or yet settled its views on a subject ...'. the second paragraph to add ' or other ASIC regulatory action' after the 'investigation'. <p>In the 'Your actions' section, adds 'Where appropriate, you have taken prompt action to investigate and rectify the breach once identified' after 'You have taken available steps to alleviate any mischief resulting from the conduct'.</p> <p>Changes the title of the 'Your actions in the past' section to 'Your past actions' and adds 'where there are repeated contraventions over multiple years, or where there is an ongoing failure to monitor compliance with the conditions in a legislative instrument to ensure the relief continues to apply' after '(e.g. where past contraventions may demonstrate that your compliance systems are inadequate).'</p>
RG 108.36–RG 108.37	<p>Changes heading from 'We may not give a final answer' to 'We may not give a final determination'.</p> <p>Includes new content stating that:</p> <p>'ASIC's decision whether or not to provide a no- action letter is not reviewable by the Administrative Review Tribunal.'</p>
RG 108.45	Includes new content on urgent applications.
RG 108.46	Includes new content to reflect that an application is required to be submitted through the ASIC Regulatory Portal.
RG 108.47	Includes new content to reflect that an application fee is payable for a request for a no-action letter.
Section D General content changes	This section of the current RG 108 has been removed and replaced by content in Section C.
Key terms and related information	Includes consequential amendments relating to the proposed content changes.