

11 March 2025

To,
Project leader
RRI Consultation - CS 16 Reportable situations
Australian Securities and Investments Commission

Sent via email: rri.consultation@asic.gov.au

Deloitte response to ASIC Consultation CS 16 Reportable situations – additional relief.

Dear Project leader,

Deloitte Touche Tohmatsu is pleased to respond to the consultation process on the proposal to provide additional relief under the reportable situations regime. We understand the proposal is to consolidate this additional relief and the relief in the existing *ASIC Corporations and Credit (Breach Reporting—Reportable Situations) Instrument 2024/620* (ASIC Instrument 2024/620) into a new instrument.

We support Australian Securities and Investment Commission's (ASIC) initiative to provide relief from reporting certain breaches to reduce the reporting burden on industry while still ensuring that ASIC receives reports of high regulatory value. We would like to take this opportunity to provide the following recommendations in this regard (regulatory references provided below relate to Corporations Act 2001 (Act)):

1. Relief to allow additional 30-days for remediation to clients:

Background

Incident management involves several steps including identification, reporting, investigation, assessment and conclusion. It is normal for all of these steps to take 30 days or longer. The proposed relief requires that remediation to clients should have also been done within this 30-day time frame. In practice, client remediation could take many forms including financial or otherwise. This may involve certain operational tasks not always in the control of the licensee, for instance, confirming the correct bank details of the client for sending the remediation amount. It may sometimes be impractical to complete all steps from 'first occurrence' to 'client remediation' within the 30-day period even for trivial matters that the proposed relief seeks to address. This practical challenge in the proposed timeframe could limit the proposed utility of the relief that would otherwise qualify under the remaining criteria.

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Recommendation

We recommend that an additional 30-day period be allowed for any client remediation required as a result of the breach.

2. Breach of a registered scheme's compliance plan to be exempt from being 'deemed significant':

Background

Compliance plans of a registered scheme contain detailed procedures implemented by its responsible entity (RE) for ongoing compliance with the Act and the scheme's constitution. These procedures are often operational and granular in nature reflecting ongoing activities of the RE in running the scheme.

Section 601FC(1)(h) is a civil penalty provision which means any non-compliance with such detailed procedures outlined in the compliance plan could be considered as 'deemed significant' and hence reportable under section 912DAA.

Based on our experience, we notice that:

- a. matters reported as 'deemed significant' breaches of section 601FC(1)(h) are often operational incidents in the normal course of running the scheme
- b. these operational incidents may not necessarily result in an actual non-compliance with the underlying requirements of the Act or the constitution of the scheme
- c. description of the procedures within the compliance plan often determines whether there is a breach of section 601FC(1)(h). This may result in inconsistency of breach reporting based on the design of the compliance plans.

Recommendation

We recommend that a breach of a compliance plan be exempt from the 'deemed significant' provisions by adding section 601FC(1)(h) to the list of exempt civil penalty provisions under section 912D(4)(b). Of course, if the breach is in fact significant and not operational then it would be captured under the normal rules of 'significance' to be reported.

3. Remove duplication of breach reporting by external auditor under section 990K if already reported by the licensee:

Background

Section 990K requires the external auditor of a licensee to report certain breaches to ASIC, even though a matter may have already been reported to ASIC by the licensee. This often creates duplication of reporting by the external auditor adding further costs with arguably limited regulatory value.

Recommendation

We recommend that section 990K be amended to remove duplication of breach reporting by the external auditor if the same matter has been reported already by the licensee.

We welcome the opportunity to discuss these matters further with you. If you have any questions, please do not hesitate to contact me at [REDACTED].

Thank you for considering our feedback.

Best regards

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]