



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 26

# Resignation, removal and replacement of auditors

June 2015

### About this guide

This is a guide for public companies, responsible entities of registered managed investment schemes, Australian financial services (AFS) licensees, credit licensees, and their appointed auditors.

It explains how we may exercise our power to:

- give consent to the resignation or removal of auditors under certain provisions of the *Corporations Act 2001* (Corporations Act); and
- approve the resignation or replacement of auditors under certain provisions of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

### 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 version was issued in June 2015 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Policy Statement 26, issued 22 June 1992, rebadged as a regulatory guide July 2007

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

This guide explains the policies and principles that influence how we may exercise our powers to give consent or approval to the resignation, removal or replacement of auditors.

It explains how these policies and principles apply to auditors of:

- public companies;
- financial reports and compliance plans of registered managed investment schemes (registered scheme financial reports and compliance plans);
- Australian financial services (AFS) licensees; and
- trust accounts of credit licensees (credit licensee trust accounts).

We discuss considerations for directors and audit committees.

We also give guidance about how to apply to ASIC for consent, including what information should be provided with the application.

### Our general approach to change of auditor

RG 26.1 The *Corporations Act 2001* (Corporations Act) and the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) contain provisions on the resignation, removal and replacement of auditors for different entities.

RG 26.2 This guide sets out the policies and principles that influence how we may exercise our power to give consent or approval in these circumstances under s329(6), 331AC(1), 331AC(3), 601HH(1)(b), 601HH(3), 990F(b) and 990G(2) of the Corporations Act and regs 19(4)(d) and 19(4)(e) of the National Credit Regulations.

Note 1: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified. References to regulations (regs) are to the National Credit Regulations, unless otherwise specified.

Note 2: In general, for the purposes of our guidance, 'consent' also includes 'approval' in the context of the National Credit Regulations.

RG 26.3 Section B of this guide explains our general approach to a change of auditor, including:

- (a) the matters we will consider in deciding whether to give our consent; and
- (b) other circumstances that may result in a change of auditor.

## When we will give our consent

- RG 26.4 In general, we will consent to the resignation, removal or replacement of an auditor *at any time of the year* if:
- (a) our criteria for consent are satisfied;
  - (b) all relevant supporting information is provided with the application; and
  - (c) where relevant, disclosure is made to ASIC and the market, or to members, as applicable.
- RG 26.5 However, we will generally not consent to the resignation, removal or replacement of an auditor *at any time of the year* where:
- (a) concerns are raised by the outgoing auditor about a disagreement with management; and/or
  - (b) other evidence indicates that we should not provide our consent.
- RG 26.6 We expect an outgoing auditor to bring to our attention any matters, such as:
- (a) if the outgoing auditor is aware that their resignation, removal or replacement may be connected with ‘opinion shopping’;
  - (b) details of any disagreement with management or directors (including management or directors of a responsible entity); and
  - (c) any other circumstances or matters connected with the auditor ceasing to hold office that should be brought to our attention.
- RG 26.7 We will decide whether to consent to a resignation, removal or replacement on the merits of each case.

## Other circumstances that may result in change of auditor

- RG 26.8 We also provide guidance on other circumstances that may result in a change of auditor, including:
- (a) loss of auditor independence due to a conflict of interest situation;
  - (b) deliberate disqualification by an auditor; and
  - (c) changes in the structure of an audit firm due to a merger, acquisition or dissolution.

## The role of directors and audit committees

- RG 26.9 It is important that directors and audit committees support auditor independence, audit quality, and the rights of members to decide on the appointment of an incoming auditor. Section C of this guide discusses considerations by directors and audit committees relating to a change of auditor.

- RG 26.10 In particular, directors and audit committees of public companies should consider whether a change of auditor should occur only at an annual general meeting (AGM) of the company.

## How the requirements apply

- RG 26.11 Section D of this guide explains in more detail the requirements that apply to different types of auditors under the relevant legislation—that is, auditors of public companies, registered scheme financial reports and compliance plans, AFS licensees, and credit licensee trust accounts.
- RG 26.12 It also gives guidance on what should be addressed in the application for consent for each type of auditor and whether disclosure is required as a condition of our consent.
- RG 26.13 Table 1 summarises the requirements and application process for each type of auditor. It also specifies that our consent is not required for:
- (a) the removal of an auditor of a company (other than the removal of an auditor of a proprietary company that is an AFS licensee or the replacement of an auditor of the trust account of a credit licensee that is a company);
  - (b) the resignation of an auditor of a proprietary company or a small company limited by guarantee (except where the proprietary company is an AFS licensee or the company is a credit licensee); or
  - (c) the resignation or removal of an auditor of a self-managed superannuation fund.

## How to apply to ASIC for consent

- RG 26.14 Section E of this guide gives further guidance about the application process and other procedural matters, including:
- (a) how and when to lodge an application;
  - (b) how we assess an application;
  - (c) what notification we will give of our decision;
  - (d) when the resignation, removal or replacement takes effect; and
  - (e) how to apply for a review of a decision if we refuse to give our consent.

**Table 1: Overview of requirements and application process**

Type of auditor	ASIC consent	Information to be provided	Disclosure with consent	Relevant forms*
Public companies: see RG 26.50–RG 26.67	Required for resignation of auditor Not required for removal of auditor	All the information in RG 26.29 and RG 26.31–RG 26.32 if resignation is at an AGM  All the information in RG 26.29–RG 26.32 if resignation is other than at an AGM	No disclosure required if resignation is at an AGM  If resignation is other than at an AGM, disclosure to: <ul style="list-style-type: none"> <li>ASIC and any relevant market operator if the public company is a disclosing entity;</li> <li>members if the public company is not a disclosing entity</li> </ul>	Form 315 Form 342
Registered scheme financial reports and compliance plans: see RG 26.68–RG 26.76	Required for resignation or removal of auditor	All the information in RG 26.29–RG 26.32	Disclosure to: <ul style="list-style-type: none"> <li>ASIC and any relevant market operator if the registered scheme is a disclosing entity;</li> <li>members if the registered scheme is not a disclosing entity</li> </ul>	Form 1003 Form 5112 Form 5113 Form 5114 Form 5132 Form 5133
AFS licensees: see RG 26.77–RG 26.82	Required for resignation or removal of auditor  Note: If the AFS licensee is a public company, see also the requirements for auditors of public companies: see above.	All the information in RG 26.29–RG 26.32	No disclosure required	Form FS07 Form FS08 Form FS09
Credit licensee trust accounts: see RG 26.83–RG 26.87	Required for resignation or replacement of auditor  Note: In this guide, 'consent' includes 'approval' in the context of the National Credit Regulations.	All the information in RG 26.29–RG 26.32	No disclosure required	Form CL17 Form CL18
Proprietary companies or small companies limited by guarantee	Not required (unless the company is an AFS licensee (proprietary company) or a credit licensee: see above)	—	—	—
Self-managed superannuation funds	Not required	—	—	—

\* For the full titles of forms, including forms relating to the appointment of auditors, see the 'Related information' at the end of this guide.

## B Our general approach to change of auditor

### Key points

This section explains our general approach when considering whether to give consent to the resignation, removal or replacement of an auditor.

It gives guidance on:

- when we will give our consent (see RG 26.15–RG 26.32); and
- other circumstances that may result in a change of auditor, such as loss of auditor independence or deliberate disqualification by an auditor, or changes in the structure of an audit firm due to a merger, acquisition or dissolution (see RG 26.33–RG 26.40).

### When we will give our consent

#### Matters considered for all applications

- RG 26.15 In exercising our powers to consent to the resignation, removal or replacement of an auditor, our overriding concerns are to ensure that the quality and independence of the audit function are preserved.
- RG 26.16 In particular, when deciding whether to consent to the resignation, removal or replacement of an auditor, we will consider:
- (a) any threats to the independence of the auditor (see RG 26.43–RG 26.44);
  - (b) whether the timing of any change in auditor may have an impact on the effective completion of an audit by the incoming auditor (see RG 26.46–RG 26.49); and
  - (c) the statutory right of members of a public company to decide on the appointment of new auditors at an AGM (see RG 26.46–RG 26.47).
- RG 26.17 In general, we will give our consent to the resignation, removal or replacement of an auditor of a public company, registered scheme financial report or compliance plan, AFS licensee or credit licensee trust account if:
- (a) we consider that there is no evidence of an actual or perceived compromise of the auditor's independence;
  - (b) there is no evidence of 'opinion shopping' (see RG 26.18–RG 26.21);
  - (c) the nature and extent of any disagreements with the company's management or directors, the management and directors of the registered scheme's responsible entity, the AFS licensee or credit licensee is not of concern to us (see RG 26.22–RG 26.27);
  - (d) there is an inability by the auditor to fulfil all of their obligations under the Corporations Act or the National Credit Regulations due to a



- genuine incapacity of the auditor to complete the audit engagement that is beyond their control (e.g. relocation of the audited entity to another state in which the auditor has no office), as opposed to a disagreement with management or directors under (c) above;
- (e) given the timing of the proposed change in auditors, there is no reason to suggest that the proposed incoming auditor could not conduct an effective audit;
  - (f) all the information has been provided with the application, as applicable; and
  - (g) there are no other circumstances or matters connected with the auditor ceasing to hold office that should be brought to our attention (see RG 26.28–RG 26.32).

### Opinion shopping

- RG 26.18 ‘Opinion shopping’ is the practice of searching for an auditor willing to support a particular accounting treatment. It involves an entity communicating with an auditor about their views on specific or proposed accounting treatments before a new appointment.
- RG 26.19 We will be unlikely to consent to an application for the resignation, removal or replacement of an auditor that appears to be connected to opinion shopping.
- RG 26.20 An auditor approached by an entity’s directors to be appointed as auditor should not in any way respond to requests from the entity to confirm whether any accounting treatments or proposed treatments are acceptable.

Note: This generally does not preclude an entity from obtaining accounting advice from an independent source that is in no way connected with a possible future change in auditors: see also Information Sheet 183 *Directors and financial reporting* (INFO 183).

- RG 26.21 We will have regard to an application for the resignation, removal or replacement of an auditor that may be connected with the provision of a modified audit opinion within the two most recent financial years and any subsequent interim period.

### Disagreements

- RG 26.22 For the purposes of RG 26.17(c), ‘disagreement’ includes any difference of opinion which (if not resolved to the satisfaction of the outgoing auditor) would have caused the auditor to refer to the subject matter of the disagreement in their audit report or in contravention notifications to us (e.g. under s311).
- RG 26.23 ‘Disagreement’, therefore, does not include initial differences of opinion based on incomplete facts or preliminary information that are later resolved

to the outgoing auditor's satisfaction due to additional relevant facts or information that dispels any difference of opinion.

- RG 26.24 Examples of disagreements that we would expect the outgoing auditor to tell us about include:
- (a) disagreements concerning a choice of accounting policies, principles or practices;
  - (b) disagreements concerning accounting estimates or financial report disclosure;
  - (c) officers not providing information or explanations to the auditor;
  - (d) limitations on the scope of the audit in the two most recent financial years and any subsequent interim period;
  - (e) disagreements about the auditor's audit scope or procedures; or
  - (f) the auditor not being able to obtain sufficient appropriate evidence about a component in the financial statements, which could result in them modifying their audit opinion.

This is not an exhaustive list. We encourage auditors to contact us if they have doubt as to whether or not there is a disagreement.

- RG 26.25 Matters notified to us should include those that have been covered in the most recent audit or review report.
- RG 26.26 Disagreements do not include disputes of a commercial nature between the auditor and the client (e.g. non-payment of audit fees).
- RG 26.27 We would be unlikely to consent to an application for the resignation, removal or replacement of an auditor where there is an inability by the auditor to fulfil all of their obligations under the Corporations Act or the National Credit Regulations due to a disagreement between the auditor and the entity of the type referred to above.

### **Information to be provided with applications**

- RG 26.28 For the purposes of RG 26.17(f), the following information should be provided with any applications, as applicable:
- (a) a statement from the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) additional information from the outgoing auditor (for resignations other than the resignation of an auditor of a public company that will take effect at an AGM) (see RG 26.30);
  - (c) information from the entity (see RG 26.31); and
  - (d) confirmation of the proposed incoming auditor (see RG 26.32).

**Statement from the outgoing auditor**

RG 26.29 The applicant seeking our consent to any resignation, removal or replacement of an auditor should provide a statement from the outgoing auditor as to:

- (a) whether all matters that require reporting to ASIC under the relevant legislation have been reported to us at the date of the application, and that any further such matters that come to the outgoing auditor's attention before the resignation, removal or replacement will be reported to us;

Note: Under s311, 601HG(4), 601HG(4A), 601HG(4B) and 990K of the Corporations Act and s104 of the National Credit Act, an auditor must report certain matters to us: see Regulatory Guide 34 *Auditor's obligations: Reporting to ASIC* (RG 34).

- (b) whether there are any disagreements with the management or directors of the public company or registered scheme's responsible entity, or the AFS licensee or credit licensee (see RG 26.22–RG 26.27);
- (c) whether there is any evidence of opinion shopping (see RG 26.18–RG 26.21);
- (d) whether there are any other circumstances or matters connected with the auditor ceasing to hold office that should be brought to our attention;
- (e) whether for a resignation, the auditor has notified the company's directors, the responsible entity's directors, the AFS licensee or credit licensee in writing of their application to ASIC for consent to resign; and
- (f) whether there are any reasons that give rise to an inability to complete any audit under the Corporations Act or National Credit Regulations.

**Additional information from the outgoing auditor**

RG 26.30 For resignations, other than for the resignation of the auditor of a public company that will take effect at an AGM, the outgoing auditor should provide the following additional information with their application:

- (a) details of the timing of the proposed resignation; and
- (b) whether the auditor provided an adverse or disclaimer opinion or qualification within the two most recent financial years and any subsequent interim period.

**Information from the entity**

RG 26.31 The directors of a public company or a responsible entity, or the AFS licensee or credit licensee, should also provide the following information with the application:

- (a) evidence that the entity has approved the appointment of the proposed incoming auditor subject to our consent, in the following form:

- (i) for a public company, a resolution of the directors which may also have reference to the appointment being subject to approval at an AGM;
  - (ii) for a registered scheme financial report or compliance plan, a resolution of the directors of the responsible entity; and
  - (iii) for an AFS licensee or credit licensee trust account, a resolution of the directors or members of a company, the partners of a partnership or the individual who is the licensee;
- (b) for the removal or replacement of an auditor, whether the auditor has been notified in writing of the application to ASIC for consent;

Note: Our consent is not required for the removal of an auditor of a company, except for an auditor of a proprietary company that is an AFS licensee (see RG 26.77–RG 26.82) or the replacement of an auditor of the trust account of a credit licensee that is a company (see RG 26.83–RG 26.87).

- (c) whether there are any disagreements with the auditor; and
- (d) whether there are any reasons that give rise to an inability to complete any audit under the Corporations Act or National Credit Regulations.

#### **Confirmation of the proposed incoming auditor**

RG 26.32 The application should be accompanied by a letter from the proposed incoming auditor:

- (a) agreeing to be appointed, subject to our consent to the resignation, removal or replacement of the incumbent auditor; and
- (b) if the change is close to the reporting deadline, confirming that they can reasonably expect to conduct an effective audit before the reporting deadline.

## **Other circumstances that may result in change of auditor**

### **Loss of independence**

RG 26.33 If the requirements in s327B(2A)–(2C) or 331AAA(2A)–(2C) for notification and resolution of a conflict of interest situation are not met, the appointment of the auditor ceases, and our consent to the resignation is not required.

RG 26.34 In all cases, the auditor independence requirements in Div 3 of Pt 2M.4 require the auditor to notify us promptly within the prescribed timeframe after becoming aware of a conflict of interest situation.

### **Deliberate disqualification**

RG 26.35 Under s324CM, the appointed auditor of a company or of a registered scheme financial report must not disqualify themselves deliberately from

acting as auditor of the company or scheme—that is, in the course of their appointment, an auditor must not bring about a state of affairs that would make the auditor contravene the registration and auditor independence requirements in Divs 2 and 3 of Pt 2M.4.

RG 26.36 Further, under s990D(2), an appointed auditor of an AFS licensee must not deliberately disqualify themselves from acting as the auditor of the licensee.

RG 26.37 While we may consent to an application for resignation or removal, if it appears that the auditor may have deliberately disqualified themselves, we may take action in relation to a contravention.

### **Mergers, acquisitions and dissolutions of audit firms**

RG 26.38 Mergers or acquisitions of audit firms do not just involve a name change for one of the firms. At least one firm will cease to exist and a change in auditors should be effected as outlined in this guide.

RG 26.39 If an audit firm that is a partnership is dissolved, or has been dissolved, before our consent to the auditor's resignation or removal has been obtained, the audit vests in each member of the firm who is a registered company auditor: s324AB(1)–(2) and regs 7.8.15(2)–(3) of the Corporations Regulations 2001 (Corporations Regulations). The appointment of such a member as auditor is not affected by the dissolution (except in circumstances relating to reconstitution of the firm). We therefore expect the provisions of the Corporations Act on the resignation and removal of auditors to apply to each registered company auditor of the firm.

RG 26.40 Where a firm is reconstituted through the normal withdrawal of a member, our consent to a resignation or removal is not required unless the withdrawing member is the last remaining registered company auditor: s324AC and regs 7.8.15(4)–(5) of the Corporations Regulations.

## C The role of directors and audit committees

### Key points

This section discusses considerations for directors and audit committees in:

- supporting auditor independence and audit quality (see RG 26.41–RG 26.45); and
- determining the timing of a change in auditor (see RG 26.46–RG 26.49), including supporting the right of members of public companies to decide on the appointment of a proposed incoming auditor.

### Auditor independence and audit quality

- RG 26.41 Directors and audit committees can play an important role in:
- ensuring the independence of auditors from undue influence by management and others; and
  - promoting audit quality.
- RG 26.42 Where there is good corporate governance, audit committees and directors can provide a measure of protection for members, as well as over the audit process. Auditor independence and audit quality are important to the quality of financial reporting.

#### Auditor independence

- RG 26.43 Auditor independence is fundamental to the credibility and reliability of an auditor's report.
- RG 26.44 An auditor must exercise objective and impartial judgement in conducting an audit, and must be able to report the audit findings free from any pressure and undue influence from others. The threat of removal from office by directors of a company or responsible entity, or other officers, could be used to exert pressure or influence on the auditor. If there is potential uncertainty about the continuation of an auditor at the time that a financial report is completed, this may create a threat to independence.

#### Audit quality

- RG 26.45 Information Sheet 196 *Audit quality: The role of directors and audit committees* (INFO 196) includes further information on matters that directors and audit committees may consider in connection with replacing auditors.

## Timing of change in auditor and maintaining members' rights

### Public companies

- RG 26.46 Directors and audit committees of public companies should consider whether any resignation should take place at the next AGM to ensure that the rights of the members to appoint auditors are maintained and the independence and objectivity of auditors is protected.
- RG 26.47 Members of public companies have the right to appoint auditors at an AGM. The resignation of an auditor during a financial year can lead to a new auditor being appointed by the directors and undertaking an audit before the appointment has been considered by the members at an AGM.

### Registered schemes

- RG 26.48 Registered schemes have no AGM. The appointment of an auditor of a registered scheme financial report or compliance plan is controlled by the responsible entity of the scheme and not by scheme members.
- RG 26.49 This does not mean that the independence of auditors and audit quality are less important. Directors of the responsible entity should consider whether the auditor of a registered scheme financial report or compliance plan should change immediately after completion of the audit report.

## D How the requirements apply

### Key points

This section explains in more detail the requirements that apply and what should be addressed in the application for:

- the resignation of an auditor of a public company under s329(5) and 329(6) (see RG 26.50–RG 26.67);
- the resignation or removal of an auditor of a registered scheme financial report or compliance plan under s331AC and 601HH (see RG 26.68–RG 26.75);
- the resignation or removal of an auditor of an AFS licensee under s990F and 990G (see RG 26.77–RG 26.82); and
- the resignation or replacement of an auditor of a credit licensee trust account (trust account auditor) under regs 19(4)(d) and 19(4)(e) of the National Credit Regulations (see RG 26.83–RG 26.87).

Note: In general, for the purposes of our guidance, the word 'consent' also includes 'approval' in the context of the National Credit Regulations.

### Auditors of public companies

RG 26.50 The auditor of a public company may resign if the auditor has applied, in writing, to ASIC for our consent to the resignation and consent has been granted: s329(5) and 329(6).

Note: Our consent is not required for the resignation of an auditor of a proprietary company or a small company limited by guarantee, except for an auditor of a proprietary company that is an AFS licensee (see RG 26.77–RG 26.82) or an auditor of a credit licensee trust account (see RG 26.83–RG 26.87).

RG 26.51 Form 342 *Application for consent from ASIC to resign as an auditor of a public company* should be used by an auditor to apply for consent to resign as the auditor of a public company. In addition, the company must notify ASIC of any change in auditor using Form 315 *Notification of resignation, removal or cessation of auditor*.

RG 26.52 The appointment of an auditor is primarily a matter for the members. While the directors must fill any vacancy in the office of auditor that occurs other than at an AGM (s327C(1)), the incoming auditor's term will expire at the next AGM. In this case, the members must appoint an auditor at the next AGM: s327B(1)(b).



## Resignations that take effect at an AGM

- RG 26.53 The auditor of a public company can apply for consent for a resignation to take effect at the next AGM. The following information should be provided with the application:
- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) information from the entity (see RG 26.31); and
  - (c) confirmation of the proposed incoming auditor (see RG 26.32).
- RG 26.54 We would generally expect the auditor to lodge an application for consent before the auditor's report is signed. This will help to minimise any impact an unresolved decision about the resignation might have on the independence of the auditor during the completion of the audit process, and ensure that this decision and the appointment of an incoming auditor does not interfere with this process.
- RG 26.55 In general, we will consent to the resignation of an auditor that takes effect at the next AGM, subject to the matters in RG 26.17.
- RG 26.56 If a vacancy in the office of auditor of a public company occurs at the AGM, the company must appoint a new auditor: s327B(1)(b). Under s328B, the nomination of an incoming auditor should be received by the company from a member of the company before the meeting is convened, or not less than 21 days before the meeting.

## Resignations that take effect other than at an AGM

- RG 26.57 If the auditor of a public company wishes to resign on a date other than at an AGM, the following information should be provided with the application:
- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) additional information from the outgoing auditor (see RG 26.30);
  - (c) information from the entity (see RG 26.31); and
  - (d) confirmation of the proposed incoming auditor (see RG 26.32).
- RG 26.58 In general, we will consent to the resignation of an auditor of a public company to take effect at any time of the year, subject to:
- (a) the matters in RG 26.17; and
  - (b) the disclosure in RG 26.59–RG 26.61, as applicable.

### Disclosure of resignation of auditor

- RG 26.59 If we consent to the resignation of an auditor of a public company that is a disclosing entity other than at an AGM, our consent will take effect when the

company gives ASIC and any relevant market operator for the company a continuous disclosure notice that contains:

- (a) details of the outgoing auditor;
- (b) details of the proposed incoming auditor; and
- (c) the reason for the change in auditor.

RG 26.60 We expect that this continuous disclosure notice would not deal with other matters.

Note: If the public company is an unlisted disclosing entity, it notifies ASIC of any change in auditor using Form 1003 *Disclosure notice for unlisted disclosing entity*. This continuous disclosure notice must provide the information in RG 26.59 and must not deal with other matters.

RG 26.61 If we consent to the resignation of an auditor of a public company that is not a disclosing entity other than at an AGM, our consent will take effect when the company provides the information in RG 26.59 to members:

- (a) by a public notice displayed prominently on the company's website where the notice can reasonably be readily located and accessed by members;
- (b) by email; or
- (c) in writing.

### Single member public companies

RG 26.62 A single member public company can elect not to hold an AGM under s250N(4). However, our consent to the resignation of an auditor is still required under s329(5) to ensure that the auditor's independence is preserved and the incoming auditor can conduct an effective audit.

RG 26.63 The following information should be provided with the application:

- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
- (b) additional information from the outgoing auditor (see RG 26.30);
- (c) information from the entity (see RG 26.31); and
- (d) confirmation of the proposed incoming auditor (see RG 26.32).

RG 26.64 In general, we will consent to the resignation of an auditor of a single member public company at any time of the year, subject to the matters in RG 26.17.

### Removal of an auditor

RG 26.65 Our consent is not required for the removal of an auditor of a company. The information in RG 26.28–RG 26.32 need not be provided. Notice of the removal of an auditor must be lodged with ASIC using Form 315.

- RG 26.66 Removal of an auditor of a company requires the approval of company members at a general meeting. The removal process is set out in s329(1)–(4), including the requirement to give the auditor the opportunity to provide written representations to be sent to all members and read out at the general meeting. The auditor also has the right to be heard at the general meeting.
- RG 26.67 We may review the removal of an auditor where circumstances of the removal suggest that there may have been contraventions of the Corporations Act and take appropriate action.

## Auditors of registered scheme financial reports or compliance plans

- RG 26.68 An auditor of a registered scheme financial report or compliance plan who wishes to resign, or a responsible entity that wishes to remove an auditor from office, must apply, in writing, to ASIC for our consent: s331AC(1), 331AC(2) and 601HH(2).
- RG 26.69 Form 5132 *Application for consent from ASIC for resignation or removal of scheme auditor* should be used for the resignation or removal of an auditor of a registered scheme financial report. Form 5112 *Application for consent from ASIC to remove compliance plan auditor* and Form 5113 *Application for consent from ASIC to resign as compliance plan auditor* should be used for the resignation or removal of an auditor of a registered scheme's compliance plan. In addition, the responsible entity must notify ASIC of any change in auditor using Form 5114 *Notification of request by responsible entity to change compliance plan auditor* and Form 5133 *Notification of resignation, removal or cessation of a registered scheme auditor*.
- RG 26.70 The application for consent to the resignation of an auditor must be made by the auditor. An application for consent to the removal of an auditor must be made by the responsible entity.
- RG 26.71 The following information should be provided with the application:
- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) additional information from the outgoing auditor (see RG 26.30);
  - (c) information from the entity (see RG 26.31); and
  - (d) confirmation of the proposed incoming auditor (see RG 26.32).
- RG 26.72 In general, we will consent to the resignation or removal of an auditor of a registered scheme financial report or compliance plan to take effect at any time of the year, subject to:
- (a) the matters in RG 26.17; and
  - (b) the disclosure in RG 26.74–RG 26.76, as applicable.

RG 26.73 If the auditor of a registered scheme compliance plan has become ineligible to act under s601HG(2), the responsible entity must remove the auditor: s601HH(1)(a). Our consent is not required in this case.

Note: If the auditor of a registered scheme financial report has become ineligible to act under Divs 2 or 3 of Pt 2M.4, the auditor ceases to hold office under s331AAA(2). The auditor will also cease to hold office if the scheme is wound up: s331AD.

### Disclosure of resignation or removal of an auditor

RG 26.74 If we consent to the resignation or removal of an auditor of the financial report or compliance plan of a registered scheme that is a disclosing entity, our consent will take effect when the responsible entity of the scheme gives ASIC and any relevant market operator for the scheme a continuous disclosure notice that contains:

- (a) details of the outgoing auditor;
- (b) details of the proposed incoming auditor; and
- (c) the reason for the change in auditor.

RG 26.75 We expect that this continuous disclosure notice would not deal with other matters.

Note: If the scheme is an unlisted disclosing entity, it notifies ASIC of any change in auditor using Form 1003. This continuous disclosure notice must provide the information in RG 26.74 and must not deal with other matters.

RG 26.76 If we consent to the resignation or removal of an auditor of the financial report or compliance plan of a registered scheme that is not a disclosing entity, our consent will take effect when the responsible entity of the scheme provides the information in RG 26.74 to members of the registered scheme:

- (a) by a public notice displayed prominently on the responsible entity's website where the notice can reasonably be readily located and accessed by members;
- (b) by email; or
- (c) in writing.

## Auditors of AFS licensees

RG 26.77 The audit of an AFS licensee involves conducting a financial audit and a compliance audit as to whether the licensee is complying with certain requirements of the Corporations Act and their AFS licence.

RG 26.78 An auditor of an AFS licensee may resign if the auditor has applied, in writing, to ASIC for our consent and consent has been granted: s990G. Our consent must also be obtained if an AFS licensee wishes to remove an auditor from office: s990F.

Note 1: If an AFS licensee is a public company, s990B–990H do not apply (s990A), and the resignation and removal of an auditor occurs under s329: see RG 26.50–RG 26.67.

Note 2: Where the AFS licensee is a proprietary company and engages an auditor under s325 to audit its financial report, the resignation and removal of the auditor occurs under s329. In this case, our consent is not required and the company must lodge Form 315 within 14 days after receiving the notice of resignation from the auditor or after the removal: s329(11)(c).

- RG 26.79 Applications should be made using Form FS07 *Application for consent from ASIC to remove an auditor of an Australian financial services licensee* or Form FS08 *Application for consent from ASIC to resign as an auditor of an Australian financial services licensee*, as relevant. In addition, the AFS licensee must notify ASIC of any change in auditor using Form FS09 *Notification of cessation of an auditor of an Australian financial services licensee*.
- RG 26.80 The application for consent to the resignation of an auditor must be made by the auditor. An application for consent to the removal of an auditor must be made by the AFS licensee. The following information should be provided with the application:
- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) additional information from the outgoing auditor (see RG 26.30);
  - (c) information from the entity (see RG 26.31); and
  - (d) confirmation of the proposed incoming auditor (see RG 26.32).
- RG 26.81 In general, we will consent to the resignation or removal of an auditor of an AFS licensee to take effect at any time of the year, subject to the matters in RG 26.17.
- RG 26.82 If the auditor of an AFS licensee has become ineligible to act under s990C and reg 7.8.16 of the Corporations Regulations, the licensee must remove the auditor: s990F(a). Our consent is not required in this case.

## Auditors of credit licensee trust accounts

- RG 26.83 Under reg 19(4), if a person is appointed as the auditor of a credit licensee to prepare a trust account audit report, the appointment is continuous until the first of the following events occurs:
- (a) the licensee is no longer required to keep a trust account;
  - (b) the auditor dies or otherwise ceases to engage in the business of being an auditor;
  - (c) the auditor is unable to perform their duties as the licensee's auditor;
  - (d) we approve the auditor's resignation; or

- (e) we approve a request by the licensee to replace the person as auditor.
- RG 26.84 A credit licensee trust account auditor may resign if the auditor has applied, in writing, to ASIC for our approval to the resignation, and approval has been granted: reg 19(4)(d). A credit licensee can also replace a trust account auditor, subject to our approval of the auditor's replacement: reg 19(4)(e).
- RG 26.85 Applications should be made using Form CL17 *Australian credit licence—Application for approval from ASIC to replace a trust account auditor* or Form CL18 *Australian credit licence—Application for approval from ASIC to resign as a trust account auditor*, as relevant.
- RG 26.86 The application for approval of the resignation of an auditor must be made by the auditor. An application for approval of the replacement of an auditor must be made by the credit licensee. The following information should be provided with the application:
- (a) a statement by the outgoing auditor addressing key considerations (see RG 26.29);
  - (b) additional information from the outgoing auditor (see RG 26.30);
  - (c) information from the entity (see RG 26.31); and
  - (d) confirmation of the proposed incoming auditor (see RG 26.32).
- RG 26.87 In general, we will approve the resignation or replacement of a credit licensee trust account auditor to take effect at any time of the year, subject to the matters outlined in RG 26.17.

## E How to apply to ASIC for consent

### Key points

Applications for consent to the resignation, removal or replacement of an auditor must be made in writing and should be lodged at least three weeks before the intended date of change: see RG 26.88–RG 26.92. We will assess each application based on the information submitted with it: see RG 26.93–RG 26.96.

We will form a view about whether to give our consent and provide written notice of our decision: see RG 26.97–RG 26.98.

An outgoing auditor continues to act as auditor until we have granted consent: see RG 26.99–RG 26.102.

Applicants may apply for a review of our decision if we refuse to give our consent: see RG 26.103–RG 26.105.

### How and when to lodge an application

RG 26.88 An application to ASIC for consent to the resignation, removal or replacement of an auditor must be made in writing, using the required form if such a form has been approved by us for this purpose.

Note: See Table 1 in the ‘Overview’ for the forms that apply for particular auditors.

RG 26.89 An application may be lodged at any time of the year subject to the requirements in this guide that apply to the particular auditor. The auditor continues to hold office until consent has been granted. For this reason, auditor arrangements should not be changed before our consent is received: see RG 26.99–RG 26.102.

RG 26.90 We do not have the power to allow a resignation, removal or replacement to take effect on a date that precedes the date on which we give consent, nor can we backdate our consent. It is therefore important that applicants lodge their applications within a reasonable time so we can give due consideration to the information provided and arrive at a decision.

RG 26.91 Generally, a reasonable time is at least three weeks before the intended date of change.

RG 26.92 Applications should be lodged at:

Australian Securities and Investments Commission  
PO Box 4000  
Gippsland Mail Centre VIC 3841

## How we assess an application

### Incomplete or deficient applications

- RG 26.93 If an application lodged with us is incomplete or deficient, it will need to be sent back to the applicant for further information or correction. Examples of deficient applications include the omission of the application fee with lodgement, using an incorrect application form for the intended purpose, or providing incomplete information on the application form.
- RG 26.94 Applications that do not sufficiently address the matters referred to in this guide, or that are incomplete or deficient, will not be assessed by us until all relevant information is provided. In this case, we will return the application to you with an 'Intent to refuse' letter, seeking correction of the deficiencies and asking for further information to support the application.

### Concerns about a change

- RG 26.95 If we have concerns about the resignation, removal or replacement of an auditor—whether these are brought to our attention in the application or otherwise—we will assess the nature of the concerns before determining whether to consent to, or refuse, the application.
- RG 26.96 Further procedures may be initiated by us, and these may include one or more of the following:
- (a) asking the auditor or the entity to provide additional information; and/or
  - (b) convening a hearing under s51 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

## What notification we will give of our decision

- RG 26.97 For applications for the resignation of an auditor, we will notify both the auditor and the entity in writing when our decision has been made.
- RG 26.98 For applications for the removal or replacement of an auditor (other than for removal of the auditor of a public company under s329), we will notify the entity in writing of our decision. The entity should give written notice of our decision to the auditor. Such notice should not be given until after the entity has received notification of our decision.



## When the resignation, removal or replacement takes effect

- RG 26.99 The resignation of an auditor of a public company, registered scheme financial report or compliance plan, or AFS licensee can only take effect on the last to occur of:
- (a) the day specified in the notice of resignation;
  - (b) the day on which we give consent; or
  - (c) the day fixed by us for this purpose under s329(8), 331AC(5), 601HH(5) and 990H (e.g. if disclosure is required as a condition of our consent).
- RG 26.100 For the removal of an auditor of a registered scheme financial report or compliance plan, or an AFS licensee, under s331AC(1), 601HH(1)(b) or 990F(b), the appointment continues until we give our consent and it ends in accordance with the terms of our consent.
- RG 26.101 For the resignation or replacement of a credit licensee trust account auditor under regs 19(4)(d) or 19(4)(e), the appointment continues until we give our approval.
- RG 26.102 In all cases, our consent should not be assumed and it is important that an outgoing auditor continues to act as auditor until we have given our consent. We will not give our consent merely because a proposed incoming auditor has commenced work. Giving consent in such circumstances would undermine the legislative requirement to obtain consent.

## How to apply for a review of a decision

- RG 26.103 You can apply to the Administrative Appeals Tribunal (AAT) for a review under s1317B if you are not satisfied with our decision: see Regulatory Guide 57 *Notification of rights of review* (RG 57).
- RG 26.104 You may apply to ASIC under s28 of the *Administrative Appeals Tribunal Act 1975* (AAT Act) to obtain the reasons for our decision. An application for a statement of reasons should be made in writing and should be lodged with ASIC within 28 days after the date of our notice of refusal.
- RG 26.105 If you choose to apply for a review of our decision without seeking a formal statement of reasons under s28 of the AAT Act, this written application should be lodged with the AAT within 28 days after the date of ASIC's notice of refusal.

## Appendix: Checklist of information to be provided with your application

### Statement from the outgoing auditor: see RG 26.29

For all applications, you have included a statement from the outgoing auditor as to:

- whether all matters that must be reported to ASIC under the relevant legislation have been reported at the date of the application, and any such further matters will be reported if they come to your attention before the resignation, removal or replacement;
- whether there are any disagreements with management or directors or the licensee;
- whether there is any evidence of opinion shopping;
- whether there are any other circumstances or matters connected with the outgoing auditor ceasing to hold office that should be brought to ASIC's attention;
- whether for resignations, the outgoing auditor has notified the directors or licensee in writing of the application to ASIC for consent; and
- whether there are any reasons that give rise to an inability to complete any audit under the Corporations Act or National Credit Regulations.

### Additional information from the outgoing auditor: see RG 26.30

For applications for the resignation of an auditor, other than for the resignation of an auditor of a public company that takes effect at an AGM, you have included the following information from the outgoing auditor:

- details of the timing of the proposed resignation; and
- whether the auditor has provided an adverse or disclaimer opinion or qualification within the two most recent financial years and any subsequent interim period.

### Information from the entity: see RG 26.31

For all applications, you have included the following information from the entity:

- evidence of a resolution that the appointment of the proposed incoming auditor has been approved by the board of directors or the licensee, as relevant;
- for the removal or replacement of an auditor, whether the directors or the licensee has notified the outgoing auditor, in writing, of the application to ASIC for consent
- whether there are any disagreements with the auditor; and
- whether there are any reasons that give rise to an inability to complete any audit under the Corporations Act or National Credit Regulations.

For applications for removal or replacement, you have included a statement that the auditor has been notified in writing of the application to ASIC for consent.

### Confirmation of the proposed incoming auditor: see RG 26.32

For all applications, you have included:

- a letter from the proposed incoming auditor agreeing to the appointment; and
- if the change is close to the reporting deadline, a statement confirming that the incoming auditor can reasonably expect to conduct an effective audit before the reporting deadline.

### Application form and lodgement fee

For all applications, you have used the required form and included the relevant application fee.

## Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
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 Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
AGM	Annual general meeting held by a public company
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Ch 2M (for example)	A chapter of the Corporations Act (in this example numbered 2M)
conflict of interest situation	Has the meaning given in s324CD of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Regulations	National Consumer Credit Protection Regulations 2010
proprietary company	Has the meaning given in s9 of the Corporations Act
Pt 2M.4 (for example)	A part of the Corporations Act (in this example numbered 2M.4)
public company	Has the meaning given in s9 of the Corporations Act
reg 19(4) (for example)	A regulation of the National Credit Regulations (in this example numbered 19(4)), unless otherwise specified

<b>Term</b>	<b>Meaning in this document</b>
registered scheme	A registered managed investment scheme
RG 57 (for example)	An ASIC regulatory guide (in this example numbered 57)
rights of review	The right to have ASIC's decision reviewed by the AAT
s310 (for example)	A section of the Corporations Act (in this example numbered 310), unless otherwise specified
trust account auditor	Auditor of a credit licensee trust account

## Related information

### Headnotes

AFS licensees, AGM, annual general meeting, application for consent, appointment of auditor, audit report, auditor independence, cessation of auditor, compliance plans, conflicts of interest, credit licensees, deliberate disqualification, directors' resolution, lodgement of application, managed investment schemes, members' resolution, opinion shopping, registered schemes, relocation, removal of auditor, replacement of auditor, resignation of auditor, rights of review, trust account audit report, trust account auditor

### Regulatory guides

RG 34 *Auditor's obligations: Reporting to ASIC*

RG 57 *Notification of rights of review*

### Legislation

AAT Act, s28

ASIC Act, s51

Corporations Act, Divs 2 and 3 of Pt 2M.4; s249K, 249V, 250N(4), 311, 324AB(1), 324AB(2), 324AC, 324CM, 327B(1), 327B(2A), 327(2B), 327(2C), 327C(1), 328B, 329(1), 329(2), 329(3), 329(4), 329(5), 329(6), 329(8), 329(9), 331AAA(2), 331AAA(2A), 331AAA(2B), 331AAA(2C), 331AC(1), 331AC(2), 331AC(3), 331AC(5), 331AD, 601HG(2), 601HG(4), 601HG(4A), 601HG(4B), 601HH(1), 601HH(2), 601HH(3), 601HH(5), 990A, 990C, 990D(2), 990F(a), 990F(b), 990G(1), 990G(2), 990H, 990K, 1317B

Corporations Regulations, regs 7.8.15(2), 7.8.15(3), 7.16.15(3), 7.8.15(4), 7.8.15(5), 7.8.16

National Credit Act, s104

National Credit Regulations, regs 19(4)(d), 19(4)(e)

### Information sheets

INFO 183 *Directors and financial reporting*

INFO 196 *Audit quality: The role of directors and audit committees*

### ASIC forms

Form 315 *Notification of resignation, removal or cessation of auditor*

Form 342 *Application for consent from ASIC to resign as an auditor of a public company*

Form 1003 *Disclosure notice for unlisted disclosing entity*

Form 5112 *Application for consent from ASIC to remove compliance plan auditor*

Form 5113 *Application for consent from ASIC to resign as compliance plan auditor*

Form 5114 *Notification of request by responsible entity to change compliance plan auditor*

Form 5132 *Application for consent from ASIC for resignation or removal of scheme auditor*

Form 5133 *Notification of resignation, removal or cessation of a registered scheme auditor*

Form 5137 *Notification of appointment of scheme auditor*

Form CL16 *Australian credit licence—Notification of appointment of a trust account auditor*

Form CL17 *Australian credit licence—Application for approval from ASIC to replace a trust account auditor*

Form CL18 *Australian credit licence—Application for approval from ASIC to resign as a trust account auditor*

Form FS06 *Appointment of an auditor of an Australian financial services licensee*

Form FS07 *Application for consent from ASIC to remove an auditor of an Australian financial services licensee*

Form FS08 *Application for consent from ASIC to resign as an auditor of an Australian financial services licensee*

Form FS09 *Notification of cessation of an auditor of an Australian financial services licensee*