



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 115

Audit relief for proprietary companies

August 2010

About this guide

This is a guide for proprietary companies and the auditors of such companies.

It refers to class order relief already given by ASIC to certain proprietary companies from the requirement to have their financial report audited under the *Corporations Act 2001* (Corporations Act). The guide also indicates when we will give additional relief from this requirement to individual proprietary companies on a case-by-case basis under s340.

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 on 30 August 2010 and is based on legislation and regulations as at 30 August 2010.

Previous versions:

- Superseded Policy Statement 115 *Audit relief for proprietary companies* (SPS 115), issued 4 September 1998, updated 4 November 1998, 4 April 2000, 7 October 2001, 6 February 2002 and 7 May 2003, rebadged as a regulatory guide 5 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

Certain proprietary companies and their auditors are eligible for audit relief under Class Order [CO 98/1417].

- RG 115.1 ASIC has given relief from the audit requirements under Class Order [CO 98/1417] *Audit relief for proprietary companies* to proprietary companies that have not had their financial report audited for any financial year ending during 1993 or since, and are not:
- (a) ‘grandfathered’ large proprietary companies under s319(4) of the old Corporations Law (as taken to be included in the *Corporations Act 2001* (Corporations Act) by s1408(2) of that Act);
 - (b) disclosing entities (see s111AC);
 - (c) borrowers (see s9);
 - (d) the guarantors of borrowing corporations; or
 - (e) licensed securities dealers or futures brokers.
- RG 115.2 This guide does not deal with relief from the financial reporting and audit requirements of the Corporations Act other than audit relief for proprietary companies. For guidance on relief from other financial reporting requirements of the Corporations Act, see Regulatory Guide 43 *Financial reports and audit relief* (RG 43).
- RG 115.3 We may revise this guide and [CO 98/1417] as more information becomes available concerning the types and number of large proprietary companies and the operation of the relief over time, or after reviews of the reporting obligations of proprietary companies.

B Reporting requirements for proprietary companies

Key points

Certain proprietary companies must prepare and lodge audited financial reports.

ASIC has the power to give audit relief.

This guide only deals with our policy for giving audit relief when compliance with the audit requirement imposes an unreasonable burden.

Usually we will only be satisfied that the audit requirement imposes an unreasonable burden when the directors and shareholders of a company have agreed to dispense with an audit, and the company is well managed and in a sound financial condition.

We may grant individual audit relief to companies which do not meet these requirements but which meet our policy in some other way.

What are the requirements?

- RG 115.4 A large proprietary company or a small proprietary company which is controlled by a foreign company must prepare and lodge with ASIC a financial report, a directors' report and an auditor's report within four months after the end of the company's financial year: s319(3). The financial report, directors' report and auditor's report must also be given to shareholders within these four months: s315(4). The auditor must form an opinion in relation to the company's financial report for the financial year as well as the company's accounting records and other records relating to that financial report: s307. The auditor must also report to members in accordance with s308.
- RG 115.5 The distinction between large and small proprietary companies is based on revenue, assets and employees: see s45A(3).

ASIC power to give audit relief

- RG 115.6 Before we give audit relief, we must be satisfied that compliance with the audit requirements:
- (a) would be misleading;
 - (b) would be inappropriate to the circumstances of the company; or
 - (c) would impose on the company, its officers or the auditor (if any) of the company, an unreasonable burden (s342(1)).

This guide sets out our policy in relation to the unreasonable burden criterion only.

- RG 115.7 The matters we are to have regard to in deciding whether the audit requirements impose an unreasonable burden on a proprietary company are set out in s342(2). These matters are:
- (a) the expected costs of complying with the audit requirements (s342(2)(a));
 - (b) the expected benefits of complying with the audit requirements (s342(2)(b)). In assessing the expected benefits of complying with these requirements, we are to take into account:
 - (i) the number of creditors and potential creditors (s342(3)(a));
 - (ii) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the company or companies) (s342(3)(b)); and
 - (iii) the nature and extent of the liabilities of the company or companies (s342(3)(c));
 - (c) any practical difficulties in complying effectively with these requirements (in particular any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the company or companies are likely to move frequently between the small and large categories from one financial year to another) (s342(2)(c)); and
 - (d) any unusual aspects of the operation of the company or companies during the financial year concerned (s342(2)(d)).

We are also to have regard to any other matters we consider relevant: s342(2)(e).

ASIC policy for giving audit relief

Objective of an audit

- RG 115.8 The objective of an audit of a financial report is to enable an auditor to express an opinion as to whether the financial report is prepared, in all material respects, according to an identified financial reporting framework: see Auditing Standard AUS 202 *Objective and General Principles Governing an Audit of a Financial Report*.
- RG 115.9 The persons most likely to benefit from an audit include, but are not limited to, shareholders, directors, creditors and potential creditors. For these persons an audit enhances the credibility and reliability of a company's financial report.

Unreasonable burden

- RG 115.10 Compliance with the audit requirements imposes a burden on the company, its officers and its auditors. Depending on the expected costs and benefits that an audit provides, the burden may be unreasonable.
- RG 115.11 For this purpose, a burden is unreasonable if it goes beyond what is based on reason or good sense and goes beyond what is equitable, or is excessive: see *Mazda Australia Pty Ltd v ASC* (1992) 8 ACSR 613 and the discussion in RG 43.
- RG 115.12 When assessing whether a burden is unreasonable we will consider the matters set out in s342(2) and 342(3). Our policy on these matters is set out in RG 115.14–RG 115.17.
- RG 115.13 It is unlikely that audit relief will be given unless the company applying for the relief generally meets the requirements set out in RG 115.29–RG 115.61. However, where a company is unable to comply with the requirements, but clearly meets our policy as set out in RG 115.14–RG 115.28 in some other way, relief may be given on the basis of analogous requirements.

Expected costs and benefits of complying with the audit requirements: s342(2)(a)–(b) and 342(3)

Costs

- RG 115.14 The expected costs of complying with the audit requirements are an unreasonable burden if these costs are out of all proportion to the expected benefits resulting from an audit. The benchmark to be applied by us is the legislative policy that, in general, for large proprietary companies the expected costs of an audit are worth incurring for the sake of the expected benefits they bring. This guide is principally about cases where the expected costs are out of all proportion to the expected benefits because the expected benefits are expected to be minimal. The additional costs and administrative burden of complying with the audit requirements are not in themselves unreasonable.
- RG 115.15 The fact that a company has had its financial report audited may indicate that there are in existence persons already using the audit report, that the costs of compliance are not excessive, or both. Directors of a company who apply for audit relief should deal with these matters in an application for relief in addition to the requirements set out in RG 115.29–RG 115.67.

Benefits

- RG 115.16 When assessing the expected benefits of complying with the audit requirements, we will consider the position of persons most likely to benefit

from an audit. These include the company's directors, shareholders, creditors and potential creditors.

- RG 115.17 When considering the position of these persons, our objective is to minimise the potential for these persons to be disadvantaged by audit relief. To achieve this objective, we will not generally give audit relief unless:
- (a) the shareholders and directors of the company agree that an audit of the company's financial report is not required; and
 - (b) we are satisfied that the company is well managed and in a sound financial condition, in respects most directly relevant to the interests of creditors.

Our policy rationale for these two requirements is discussed in RG 115.18–RG 115.21.

Directors and shareholders agree to dispense with an audit

- RG 115.18 Directors and shareholders of a company can make informed decisions as to whether or not it is in their interests to dispense with the audit. We will, in general, require the unanimous agreement of directors and shareholders, because any shareholder or director may be disadvantaged if an audit is dispensed with.
- RG 115.19 Obtaining unanimous agreement may only be practicable in circumstances when, for example, the number of shareholders and directors is small or when both groups have a fairly direct involvement with the company. However, it is outside these circumstances that the additional assurance provided to shareholders and directors by an audit may be most needed.

Well-managed companies in a sound financial condition

- RG 115.20 We must also consider the interests of creditors and potential creditors: s342(3). In general, it will not be practicable to obtain the consent of a company's existing and prospective creditors to dispense with an audit.
- RG 115.21 In order that creditors and potential creditors are not disadvantaged if an audit is dispensed with, we will only give audit relief to companies which we are satisfied will be well managed and in sound financial condition, in respects most directly relevant to the interests of creditors. These requirements are not a direct substitute for an audit. However, those companies that meet them are the ones most able to give creditors and potential creditors the type and quality of financial information otherwise required by the financial reporting framework.

Practical difficulties: s342(2)(c)

- RG 115.22 Practical difficulties in complying effectively with the audit requirements may arise in the first year for which an audit is required. This is because a

proprietary company may not be able to determine that it will be 'large' until late in its financial year: see s45A. This prevents the timely appointment of an auditor. An appointment late in a financial year, or even after the financial year end, may cause practical difficulties because this may not give an auditor enough time to properly plan and carry out the audit. This may result in additional costs and the auditor's opinion being qualified.

- RG 115.23 We will not give audit relief simply because of the late appointment of the auditor, unless the expected additional costs arising from the late appointment of an auditor, or the expected diminished benefits arising from any resulting audit qualifications, make the burden of the audit requirements unreasonable. To the extent that the increase in burden is a result of unnecessary delay in the appointment of the auditor by the company, we will not take this increased burden into account when considering giving relief.

Unusual aspects: s342(2)(d)

- RG 115.24 Audit relief may also be appropriate when a proprietary company which is usually 'small' (and is not controlled by a foreign company) becomes 'large' because of an unusual aspect in its operations during the relevant financial year. This may occur, for example, when a company disposes of a major asset and as a result becomes a large proprietary company for a year by reaching A\$10 million consolidated gross operating revenue.
- RG 115.25 We will consider giving audit relief when the circumstances that result in the proprietary company being classified as 'large' can reasonably be regarded as 'one off' or unlikely to recur or unusual.
- RG 115.26 However, we will not generally give audit relief to a company that is expected to be a large proprietary company on a regularly recurring basis, even though it may be classified as a small proprietary company in other years.

Other matters: s342(2)(e)

- RG 115.27 We will also consider any other matters that do not fall within any of the matters described in RG 115.14–RG 115.26 if they are relevant to giving audit relief.
- RG 115.28 For example, relief may be appropriate when a proprietary company is subject to external oversight involving an independent examination of its financial report. Such a situation may arise where companies are:
- (a) regulated by government agencies or departments; or
 - (b) subject to legislation other than the Corporations Act which requires their financial reports to be independently examined.

C ASIC requirements for giving audit relief

Key points

The key requirements for companies to be eligible to take advantage of the relief in [CO 98/1417] are that:

- the company's directors and shareholders must have passed unanimous resolutions dispensing with an audit and, where applicable, notice of these resolutions must have been lodged with ASIC using Form 382;
- the company must be well managed—having, at least, a system of quarterly management accounting in place;
- the company must be in a sound financial condition—the company's total liabilities must not exceed 70% of its total assets, it must be profitable from ordinary activities and remain solvent;
- the company's financial reports must be prepared by a prescribed accountant;
- the company's financial reports must be lodged on time; and
- there is no proposed modified auditor's report or material disagreement with any auditor.

Companies that cannot meet the timeframe for complying with certain requirements of [CO 98/1417] can, where specified, apply for an extension of time. Companies that do not meet all the requirements of [CO 98/1417] can apply to ASIC for individual audit relief.

When will we give relief?

RG 115.29 We will generally only give audit relief to a proprietary company under this guide if the following requirements are met:

- (a) directors and shareholders of the company agree that an audit is not required;
- (b) we are satisfied that the company applying for audit relief is well managed and in a sound financial condition, in respects most directly relevant to the interests of creditors;
- (c) the company's year end financial report is compiled by a prescribed accountant; and
- (d) the company lodges its financial report within the deadlines in the Corporations Act.

These requirements are discussed in greater detail in RG 115.30–RG 115.61. This discussion generally refers to the requirements in [CO 98/1417].

Directors' and shareholders' resolutions that an audit is not required

Unanimous resolutions

- RG 115.30 Relief will be given only when the directors and shareholders (whether holding voting or non-voting shares) unanimously resolve that the company's financial report should not be audited for each financial year to which the relief applies. These resolutions must be made within the period commencing three months before the start of the financial year and ending 4 months after the end of the financial year.
- RG 115.31 It may sometimes be practically difficult to obtain the unanimous resolutions of shareholders and directors. Such difficulties may arise when, for example, directors or shareholders cannot be contacted for a prolonged period.
- RG 115.32 We will consider giving individual relief to dispense with this requirement where there is clear and documented evidence that:
- (a) reasonable attempts have been made to obtain the unanimous agreement of directors and shareholders;
 - (b) all remaining directors and shareholders agree to dispense with the audit; and
 - (c) those who have not been contacted represent a small minority of voting rights.
- RG 115.33 The agreement of directors and the agreement of shareholders is to be given by way of separate resolutions. The resolution of shareholders can be passed at a general meeting or by circulating the resolution for signing.
- RG 115.34 When the resolution of shareholders is sought at a general meeting, the shareholders must receive a notice of meeting. In the notice of meeting the directors must state whether, in their opinion, the expected costs of having the financial statements of the company audited outweigh the expected benefits of the audit. The reasons for the directors' opinion must also be included. When the resolution of shareholders is sought by way of a circulating resolution, this circulating resolution must be accompanied by the same information required for the notice of meeting.

Forms 382 and 396

- RG 115.35 After the resolutions of directors and shareholders are obtained for:
- (a) the first financial year relief under the class order is to be applied; or
 - (b) the first financial year relief is to be applied following a financial year in which it did not apply (if any),

a notice of the resolutions must be lodged with us, using Form 382 *Notification of resolutions for audit relief—proprietary companies*. The notice must be lodged during the period commencing three months before the start and ending four months after the end of the first financial year in which relief is to be applied or reapplied.

- RG 115.36 If a company ceases to use relief under [CO 98/1417], after having previously lodged a Form 382, a notice of cessation of relief should be lodged with us, using Form 396 *Notice of cessation of reliance on [Class Order 98/1417]*. The notice should be lodged during the period commencing three months before the start and ending four months after the end of the first financial year in which relief will cease to apply. A company that does not lodge a Form 396 after ceasing to use relief under [CO 98/1417] will not be able to reapply class order relief for a future financial year.

Late forms and resolutions

- RG 115.37 We are of the view that we cannot grant extensions of time to lodge Form 382 or to pass the annual resolutions of directors and shareholders referred to in RG 115.30. If a company fails to lodge a Form 382 on time for the first financial year that it intends to apply or reapply relief under the order, or fails to obtain the resolutions of directors and shareholders for each financial year relief is intended to be applied, the company will not be able to apply class order relief for the financial year in question. As a result, the company will have a continuing obligation under the Corporations Act to prepare and lodge, and therefore should prepare and lodge, an audited financial report for the financial year in question. Further, once a company has lodged an audited financial report, it will be unable to apply relief under [CO 98/1417] for a subsequent financial year because of the condition at paragraph (c) of the class order.

Note: See paragraphs 5–7 of the editorial note to [CO 98/1417] for information about applying for individual audit relief for a subsequent financial year in such circumstances.

- RG 115.38 We will be very unlikely to grant individual s340 relief to take away the continuing obligation to lodge an audited financial report. This is because, in such circumstances, we think the criteria in Regulatory Guide 51 *Applications for relief* (RG 51) are very unlikely to be met. We would also be concerned about the effect of such relief on the rights of third parties. We will also be unlikely to grant a formal no-action letter in circumstances where the outstanding audited financial report has not been lodged, because the criteria in Regulatory Guide 108 *No-action letters* (RG 108) are unlikely to be met.

Note: See RG 51.68 and RG 108.29–RG 108.30 for further details.

- RG 115.39 We will consider granting extensions of time to lodge Form 396 where the extension of time is lodged before the s319(3) lodgement deadline for a financial year in which a company intends to reapply relief under [CO 98/1417]. We will be more likely to grant such an extension of time where the application demonstrates that the company has not delayed in making the application.
- RG 115.40 If Form 396 is not lodged before the s319(3) deadline for the financial year in which a company intends to reapply [CO 98/1417] relief, relief under the class order will not be available for that financial year. As a result, the company will have a continuing obligation under the Corporations Act to prepare and lodge an audited financial report for the financial year in question. In these circumstances, the company will, as soon as practicable, need to prepare and lodge an audited financial report for the financial year in question, or apply for and be granted a no-action letter under RG 108 or prospective individual relief under RG 43 and RG 51. Once a company has lodged an audited financial report, it will be unable to apply relief under [CO 98/1417] for a subsequent financial year because of the condition at paragraph (c) of the class order.

Note: See paragraphs 5–7 of the editorial note to [CO 98/1417] for information about applying for individual audit relief for a subsequent financial year in such circumstances.

Explanation regarding forms and resolutions

- RG 115.41 The Corporations Act requires all proprietary companies that are required to prepare financial statements under Ch 2M to have those financial statements audited. Audit relief is a privilege rather than a right. The requirements for relief of [CO 98/1417] were developed as part of an extensive consultation process with creditor groups, companies, accountants and others. We will carefully consider the impact of any requested relief on these parties where these conditions are not met. It would be inappropriate to penalise creditors or others who deal with the company for a failure by the company.
- RG 115.42 The conditions in the order were each developed to meet specific objectives and the conditions are not interchangeable. It is not sufficient for the company to meet all but one of the conditions of the class order to obtain relief. For example, the fact that a company meets the financial requirements for relief does not mean that the notice that the shareholders and directors have resolved to take advantage of audit relief (using Form 382) can be lodged late. Timely lodgement of the notice is intended to provide information to creditors and others who access the public records.
- RG 115.43 Many companies engage accountants, lawyers or other advisers to prepare draft resolutions and forms. In some cases, these advisers may fail to prepare draft resolutions or forms, or to lodge forms, within the times required by the class order. The fact that a company has chosen to outsource certain

functions rather than those functions being performed by the director or an employee does not absolve the company of its responsibilities.

- RG 115.44 Timely completion of the resolutions and the evidencing of those resolutions by the lodgement of Form 382 serve other objectives, such as ensuring that shareholders and directors are not pressured to agree to audit relief at a point in the financial year when it is no longer possible to obtain an unqualified audit opinion. Where the obligations are not completed on time, this may cast doubt as to whether the company is well managed and is meeting the other requirements for audit relief on time (e.g. the requirements for quarterly management accounts).
- RG 115.45 Lodging a Form 382 or Form 396, and the processing of that form on the ASIC database, does not indicate that we have given any form of approval, nor does it alone enable a company to take advantage of relief under [CO 98/1417]. A company will only have the benefit of relief if it meets all the conditions of the class order.

Notice on the company to require an audit

- RG 115.46 Even after the directors and shareholders have resolved to dispense with an audit, any director and any shareholder can, in certain circumstances, require the company's financial report to be audited. Similarly, holders of certain types of subordinated debt who have agreed that an audit is not required may request an audit.
- RG 115.47 This request can be made by any director at any time up until the date the directors' declaration is signed for the relevant year end financial report. Any shareholder, or a group of shareholders, who individually or together control at least 5% of the voting rights can also make this request, at any time until one month before the end of the relevant financial year, or within such other time as approved, in writing, by an ASIC officer. The percentage of votes required by a shareholder or shareholders requesting the audit is calculated as at the close of business on the day before the notice is served on the company. The request must be in the form of a written notice served on the company: see s220 and 109Y.

Well-managed companies in a sound financial condition

- RG 115.48 Audit relief will only be available to those proprietary companies which are well managed and in a sound financial condition in respects most directly relevant to the interests of creditors. These requirements are discussed in the following paragraphs.

Well managed

RG 115.49 The criterion we have used in [CO 98/1417] to determine that companies are well managed, in respects most directly relevant to the interests of creditors, requires that directors have appropriate internal management systems and procedures which allow them to assess the financial condition and the solvency of the company. The nature of these systems and the frequency of these procedures must be adequate for this purpose and appropriate to the company's business and financial circumstances. As a minimum, however, the assessment by directors must include a quarterly assessment of a profit and loss statement, balance sheet and cash flow statement of the company prepared for management purposes. This assessment should not be taken to define or limit in any way the directors' duty to prevent the company from trading while insolvent under s588G.

RG 115.50 The directors must resolve within one month after the end of the relevant quarter, or within such other time as approved in writing by an ASIC officer, that the company has met the criterion we have used in [CO 98/1417] to determine if the company is in a sound financial condition: see RG 115.51(a) and RG 115.51(c);

- (a) at the end of that quarter; and
- (b) at the time the resolution is made.

A copy of the management accounts used to make this resolution and a copy of the resolution itself must be given to a shareholder of the company or a person who is owed Approved Subordinated Debt, if a request for these documents is received in writing.

Sound financial condition

RG 115.51 The criterion we have used in [CO 98/1417] to determine if a company is in a sound financial condition requires that a company has all the following characteristics:

- (a) its total liabilities do not exceed 70% of its total assets, excluding intangible assets. This ratio must be satisfied at the end of each quarter during the relevant financial year, at the end of the relevant financial year and at the time the resolution is made.

Intangible assets are excluded in the above ratio because we will generally only give relief to companies that maintain a surplus of the type of assets that are less subjective in nature, can be recognised and traded separately, reliably measured and realised suddenly to enable timely payment of creditors.

If a company fails to meet this ratio but there are compensating factors, such as the existence of deeds of cross guarantee with a financially sound holding entity (i.e. such that the combined ratio of liabilities to

tangible assets of the companies is less than 70%), we may consider individual relief;

- (b) it makes a profit from ordinary activities after related income tax expense for either the relevant financial year or the immediately preceding financial year; and
- (c) it is able to pay all its debts as and when they become due and payable each quarter during the relevant financial year.

RG 115.52 The financial conditions detailed in RG 115.51(a) and RG 115.51(b) must be met on a consolidated basis for the company and its controlled entities where the company prepares consolidated financial information. At year end at the date the directors' declaration is signed, the conditions must also be met on a consolidated basis for the company and its wholly-owned entities where the companies are parties to deeds of cross guarantee for the purposes of [CO 98/1418].

RG 115.53 For the purposes of the financial conditions detailed in RG 115.51–RG 115.52, liabilities and assets must be determined in accordance with applicable accounting standards (whether or not they are otherwise applicable to the company or its controlled entities), subject to any adjustments in relation to subordinated debt outlined in RG 115.54. In particular, companies should refer to the requirements of accounting standard AASB 1033 *Presentation and Disclosure of Financial Instruments* in relation to the classification of items such as redeemable preference shares as liabilities or equity.

RG 115.54 For the purposes of the financial conditions detailed in RG 115.51–RG 115.52, subordinated debt must be included as a liability unless:

- (a) the subordination agreement is substantially in the form specified in Pro Forma 183 *Deed of subordination* (PF 183);
- (b) the subordination agreement has been executed and lodged with us prior to the commencement of the financial year and has been approved by us in writing; and
- (c) the debt is not provided by a controlled entity of the company and is not funded directly or indirectly by the company or one of its controlled entities.

RG 115.55 The ability of the company to pay its debts as and when they fall due should also be evidenced by the directors making an unqualified solvency statement in the directors' declaration (lodged with us as part of the company's financial report). A statement is not an unqualified solvency statement if the solvency of the company is expressed to be dependent on the financial support of a third party or is otherwise conditional or subject to provisos. For example, a statement which states that a company will be able to pay its debts as and when they become due and payable subject to the continuing

financial support of the company's bankers or other entities, is not an unqualified solvency statement.

Financial report compiled by a prescribed accountant

RG 115.56 In order that professional competence and due care are used in compiling the year end financial report, it must be compiled by a prescribed accountant and be in accordance with the Miscellaneous Professional Statement, APS 9 *Statement on Compilation of Financial Reports* (APS 9) (or some corresponding compilation rules or guidelines approved by ASIC). The financial report must be accompanied by a compilation report prepared by the prescribed accountant in accordance with APS 9 (or its approved corresponding compilation rules or guidelines).

RG 115.57 A prescribed accountant is:

- (a) a member of CPA Australia (CPAA), who is entitled to use the post-nominals CPA or FCPA, and is subject to and complies with the CPAA's continuing professional development requirements; or
- (b) a member of the Institute of Chartered Accountants in Australia (ICAA), who is entitled to use the post-nominals CA, ACA or FCA, and is subject to and complies with the ICAA's continuing professional education requirements; or
- (c) a member of the National Institute of Accountants (NIA), who is entitled to use the post-nominals MNIA, FNIA, PNA or FPNA, and is subject to and complies with the NIA's continuing professional education requirements; or
- (d) another accountant approved by us for the purpose of compiling financial statements under this guide and who complies with such other requirements as may be specified by us.

A prescribed accountant may be an employee of the company.

RG 115.58 When considering an application for another accountant to be approved under RG 115.57, we will consider all relevant matters. The matters to be considered may include:

- (a) the rules of ethical conduct of any relevant professional body;
- (b) the disciplinary procedures of that body with respect to its members;
- (c) the academic qualifications required to become a member of that body;
- (d) the type and amount of experience required to become a member of that body;
- (e) the continuing professional development/education requirements applied by that body to its members; and

- (f) whether members of that body are required to comply with APS 9 (or some equivalent rules or guidelines approved by us).

Lodging financial report

- RG 115.59 Relief from the audit requirements is only available if a company lodges its financial report and directors' report for the relevant financial year and the immediately preceding financial year within the deadlines in the Corporations Act or within such additional time as is approved in writing by an ASIC officer. We regard timely lodgement of the company's unaudited financial report and its directors' report as an essential requirement for audit relief.
- RG 115.60 If the company takes advantage of audit relief, its directors must state in the directors' report for the relevant financial year, that they have:
- (a) relied on audit relief given by us; and
 - (b) complied with all the requirements of this relief.

No proposed modified auditor's report

- RG 115.61 To mitigate any risk directors and shareholders of a company might be pressured to take advantage of relief because a modified audit opinion is expected, relief from the audit requirements is only available if there is no proposed modified auditor's report and there are no disagreements or unresolved issues with any auditor over accounting treatments or amounts in the company's financial report for the relevant financial year.

Extension of time by an ASIC officer

- RG 115.62 The requirements in paragraphs (fa), (g)(ii) and (iii), (k), (l) and (t) of [CO 98/1417] state that extensions of time may be approved in writing by an ASIC officer.
- RG 115.63 Applications for extensions of time must:
- (a) be made to the ASIC office in the state or territory in which the company's registered office is located, or via the website applications@asic.gov.au;
 - (b) confirm that the company and its directors have complied with all of the other conditions of [CO 98/1417] within the required time;
 - (c) be made in writing and be signed by a director or by the company secretary; and
 - (d) for applications in respect of the requirement in paragraph (fa), be accompanied by the completed form.

Procedures for obtaining individual audit relief

- RG 115.64 When a proprietary company meets the requirements of [CO 98/1417], it does not have to apply to us for individual relief (but must lodge Form 382, as explained in the editorial note to the class order).
- RG 115.65 A proprietary company which is not exempted from the audit requirements by [CO 98/1417] may:
- (a) apply for individual relief with supporting documentation covering the matters set out in RG 115.8–RG 115.61. Applications should be made in writing in accordance with a resolution of directors and a statement of the reasons for seeking relief (see s340); or
 - (b) propose further class order relief if there are a number of companies in a similar position.
- RG 115.66 The requirements of [CO 98/1417] indicate when relief may be given to a proprietary company. Any individual exemptions will generally contain most of the requirements set out in the class order. When companies do not comply with the requirements of the class order but meet our policy as set out in this guide in some other way, relief may be given on the basis of analogous requirements. Companies should state in their applications for individual relief the requirements of the class order that they do not satisfy and the proposed analogous requirements.
- RG 115.67 Applications for individual audit relief will not be accepted more than one month after the commencement of the financial year to which they relate except in rare and exceptional circumstances (such as the circumstances specified in subparagraphs (e)(i), (ii) or (iii) of [CO 98/1417]). This is consistent with our policy for extensions of time to make the relevant resolutions and lodge Form 382.

Key terms

Term	Meaning in this document
AARF	Australian Accounting Research Foundation
APS 9	Statement on Compilation of Financial Reports
AASB	Australian Accounting Standards Board
ASCPA	Australian Society of Certified Practising Accountants
ASIC	Australian Securities and Investments Commission
ASIC officer	Officers of ASIC to whom ASIC's powers and functions under s340 have been delegated
audit relief	Relief from the audit requirements of Ch 2M of the Corporations Act
audit requirements	The audit obligations described in Ch 2M of the Corporations Act
auditing standards	The standards prepared and issued by the Auditing Standards Board of the AARF on behalf of the ASCPA and the ICAA
[CO 98/1417] (for example)	An ASIC class order (in this example numbered 98/1417)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CPAA	CPA Australia
ICAA	Institute of Chartered Accountants in Australia
large proprietary companies	Large proprietary companies that are not: <ul style="list-style-type: none"> • large 'grandfathered' proprietary companies under s319(4) of the old Corporations Law (as taken to be included in the Corporations Act by s1408(2)); • disclosing entities; • borrowing corporations; • guarantors of borrowing corporations; or • licensed securities dealers or futures brokers
Miscellaneous Professional Statements	Statements issued by the ASCPA and ICAA
NIA	National Institute of Accountants
old Corporations Law	Has the meaning given in s1371 of the Corporations Act
RG 43 (for example)	An ASIC regulatory guide (in this example numbered 43)

Term	Meaning in this document
s340 (for example)	A section of the Corporations Act (in this example numbered 340)

Related information

Headnotes

relief from audit requirements for proprietary companies, class order relief given, s342(1) and 342(2), ASIC policy for giving audit relief, procedures for obtaining audit relief

Class orders and pro formas

[CO 98/1417] *Audit relief for proprietary companies*

PF 183 *Deed of subordination*

Regulatory guides

RG 43 *Financial reports and audit relief*

RG 51 *Applications for relief*

RG 108 *No-action letters*

Legislation

Corporations Act, s9, 45A, 109Y 111AC, 220, 307, 308, 315(4), 319(3), 319, 340, 342(1), 342(2), 342(2)(a), 342(2)(b), 342(2)(c), 342(2)(d), 342(3), 342(3)(a), 342(3)(b), 342(3)(c), 1408(2)

Old Corporations Law, s319(4)

Cases

Mazda Australia Pty Ltd v ASC (1992) 8 ACSR 613

ASIC forms

Form 382 *Notification of resolutions for audit relief—proprietary companies*

Form 396 *Notice of cessation of reliance on [Class Order 98/1417]*

Standards

AASB 1033 *Presentation and Disclosure of Financial Instruments*

APS 9 *Statement on Compilations of Financial Reports*

AUS 202 *Objective and General Principles Governing an Audit of a Financial Report*