



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 259

Repealing ASIC class order on managed investment schemes: No issue required disclosure

May 2016

About this paper

This consultation paper sets out ASIC's proposal to repeal a class order that we consider is no longer required and does not form a necessary and useful part of the legislative framework. Under the *Legislation Act 2003*, this class order will expire ('sunset') if not remade.

We are seeking feedback on our proposal to repeal Class Order [CO 02/226] *Managed investment schemes: No issue required disclosure*, which is due to expire on 1 April 2017.

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 paper was issued on 30 May 2016 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 28 June 2016 to:

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What will happen next?

Stage 1	30 May 2016	ASIC consultation paper released
Stage 2	28 June 2016	Comments due on the consultation paper
Stage 3	July–August 2016	Repeal of instrument

A Background

Key points

Legislative instruments, such as class orders, are repealed automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. We will consult on all sunseting legislative instruments that have more than a minor or machinery regulatory impact.

Purpose of 'sunsetting' legislative instruments

- 1 Under the *Legislation Act 2003* (Legislation Act), legislative instruments cease automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the 10th anniversary of its registration on the Federal Register of Legislation (FRL). Repeal does not undo the past effect of the instrument.
- 2 To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunseting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.
- 3 Where an instrument is deemed to no longer serve a regulatory purpose we will consult on repealing it. We will repeal instruments rather than allow them to sunset so that industry is certain of our intentions and confident that, where instruments are removed, this was our intention.

Instrument to be repealed

- 4 This consultation paper seeks feedback on our proposal to repeal Class Order [\[CO 02/226\]](#) *Managed investment schemes: No issue required disclosure* because, in our view, it no longer serves a regulatory purpose. In doing this, we hope to ensure that only instruments that serve a regulatory purpose are maintained.
- 5 We have a deregulatory focus. We are aware of the burden unnecessary red tape can impose on business and the potential impact of this on productivity. To address this, we continue to pursue initiatives to reduce red tape for individuals and businesses. We welcome feedback where repealing an instrument would impose a regulatory burden on business.

B Repealing ASIC class order

Key points

We are proposing to repeal [CO 02/226], which sunsets on 1 April 2017. We have formed the preliminary view that this class order is no longer required and does not form a necessary and useful part of the regulatory framework.

Your feedback

- 6 You are invited to comment on our proposal to repeal the ASIC class order in this section, including whether the class order is currently operating effectively and efficiently, and whether any entities are relying on it. If we do not receive any submissions requesting the class order be remade, we will repeal it. The proposal is only an indication of the approach we may take and is not our final policy.

Class Order [CO 02/226] *Managed investment schemes: No issue required disclosure*

Background

- 7 [CO 02/226] provides an alternative to s601ED(2) of the *Corporations Act 2001* (Corporations Act) to permit certain managed investment schemes to be unregistered. The purpose of the class order is to address the particular scenario where all retail members withdraw from a scheme leaving only wholesale members remaining. In that circumstance, the scheme need not be registered.
- 8 We made this class order to address the unintended consequence of a managed investment scheme being required to be registered where it contains only members not requiring regulated disclosure (i.e. wholesale members). This is consistent with the intention in s601ED(2) to permit a scheme to not be registered when all the issues of interests in the scheme did not require a Product Disclosure Statement to be given.

Proposal

- B1 We propose to repeal [CO 02/226], which would otherwise sunset on 1 April 2017. You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 02/226\]](#).

Rationale

- 9 [CO 02/226] should be repealed because it has limited operation. In most cases, by the time all retail members withdraw from the managed investment scheme, the scheme is probably already registered, and so the relief is unnecessary.
- 10 There is also little scope for the operation of this class order in light of s601PA(2)(b) of the Corporations Act, which permits the responsible entity of a registered managed investment scheme to apply to ASIC to deregister the scheme if the scheme is not required to be registered because of s601ED(2) and all the members agree that the scheme should be deregistered. This provision would almost certainly cover situations that would fall within the relief under [CO 02/226].
- 11 [CO 02/226] is an instrument that we consider no longer forms a necessary and useful part of the legislative framework. We consider that any residual need for the relief provided by this class order is more appropriately given on a case-by-case basis by application.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
[CO 14/26] (for example)	An ASIC class order (in this example numbered 14/26) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Legislation Act	<i>Legislation Act 2003</i>
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect