



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 304

# Remaking ASIC class order on share and interest purchase plans: [CO 09/425]

October 2018

## About this paper

This consultation paper sets out ASIC's proposal to remake our class order on share and interest purchase plans. Under the *Legislation Act 2003*, this class order will expire ('sunset') if not remade.

We are seeking feedback from law firms, industry and other interested people on our proposal to remake, without significant changes, Class Order [CO 09/425] *Share and interest purchase plans*, which is due to expire on 1 October 2019.

### 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 2 October 2018 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](http://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 2 November 2018 to:

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 Lawyer, Corporations  
 Australian Securities and Investments Commission  
 Level 9, 120 Collins Street  
 Melbourne VIC 3000  
 email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	2 October 2018	ASIC consultation paper released
<b>Stage 2</b>	2 November 2018	Comments due on the consultation paper
<b>Stage 3</b>	January–February 2019	Commencement of remade 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 'sunseting' legislative instruments

- 1 Under the *Legislation Act 2003*, 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.

### Our approach to remaking legislative instruments

- 3 If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. We will also, where possible, simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining ASIC's priorities of promoting investor and consumer trust and confidence and ensuring fair and efficient markets.
- 4 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact, or where we consider that consultation is appropriate, and are subject to sunseting, to ensure:
  - (a) we carefully consider the continuing regulatory and financial impact of the instrument; and
  - (b) the instrument retains its effectiveness in addressing an identified issue or problem.
- 5 Generally, a Regulation Impact Statement (RIS) is required for new and amended policy that has a significant regulatory impact: see the [Australian](#)

[Government Guide to Regulation](#). We will review, including public consultation, all class orders that have a significant regulatory impact before the scheduled sunset date. Where our review finds that a class order is not operating effectively and efficiently, we will prepare a RIS to assess any proposed changes to the class order that are not minor and machinery. Where the class order is operating effectively and efficiently, we will remake the instrument without substantive changes.

## B Remaking ASIC class order

### Key points

We are proposing to remake Class Order [CO 09/425] *Share and interest purchase plans*, which sunsets on 1 October 2019.

We have formed the preliminary view that this class order is operating effectively and efficiently, and continues to form a useful part of the legislative framework.

The class order will be redrafted using ASIC's current style and format, while preserving the current effect of the instrument.

### Your feedback

- 6 You are invited to comment on our proposal to remake [CO 09/425] in this section, including:
- (a) whether [CO 09/425] is currently operating effectively and efficiently; and
  - (b) whether the conditions of relief (including the \$15,000 limit per individual member in any consecutive 12-month period) should remain unchanged.
- 7 This proposal is only an indication of the approach we may take and is not our final policy.

### Class Order [CO 09/425] *Share and interest purchase plans*

#### Background

- 8 [CO 09/425] allows ASX-listed companies to offer shares to existing members without a prospectus under a share purchase plan. The relief extends to ASX-listed managed investment schemes offering interests to existing members without a Product Disclosure Statement (PDS).
- 9 Generally, an offer of shares or interests requires a disclosure document under Chs 6D or 7 of the *Corporations Act 2001* (Corporations Act). In the absence of relief provided by [CO 09/425] companies may consider the cost of preparing and distributing a disclosure document in conjunction with a share purchase plan to be overly high. [CO 09/425] provides conditional relief from the disclosure document requirement in order to mitigate any disadvantage to retail members who do not have access to other means of

- fundraising that do not require disclosure documents, such as institutional placements.
- 10 Share and interest purchase plans afford existing members an opportunity to purchase shares or interests priced at a discount to the prevailing market price, during a defined period before the offer, and without incurring brokerage fees or stamp duty.
- 11 The relief given by [CO 09/425] is conditional on the issuing entity being in compliance with its financial reporting and continuous disclosure obligations, which ensures that members have access to timely and accurate information on which to base their decision to participate in the share or interest purchase plan. [CO 09/425] further precludes relief for entities whose shares or interests have been suspended for more than five days in the 12-month period before the offer (or since the shares or interests became quoted) to ensure that the market price accurately reflects all publicly available information.
- 12 [CO 09/425] only applies when the issue of shares or interests under the purchase plan does not exceed \$15,000 per member, in any consecutive 12-month period.
- 13 [CO 09/425] superseded Class Orders [CO 02/831] Share purchase plans and [CO 02/832] Interest purchase plans, which operated before 18 June 2009, and which provided similar relief to listed companies and listed managed investment schemes respectively, with the exception that the monetary limit available to individual members was capped at \$5,000 in any consecutive 12-month period.

## Proposal

**B1** To preserve its effect beyond the sunset date of 1 October 2019, we propose to continue the relief currently given by [CO 09/425] by remaking this class order in a new legislative instrument that reflects current drafting practice, without any significant changes. You can access the current instrument at [www.legislation.gov.au](http://www.legislation.gov.au) by clicking on the following direct link: [\[CO 09/425\]](#).

The only changes proposed are to:

- (a) update the name of the legislative instrument; and
- (b) reflect current drafting practice and update the format of the current document.

## Rationale

- 14 We have reached the preliminary view that [CO 09/425] is operating effectively and efficiently and continues to form a useful part of the



legislative framework. We are not aware of significant issues with the current operation of this class order.

- 15 We have considered whether the conditions of the class order remain appropriately calibrated, and our preliminary view is that they are. We have specifically considered whether the \$15,000 monetary limit should be increased. We currently do not propose to increase this amount on the basis that, since [CO 09/425] became effective:
- (a) our research indicates that less money has been raised under share and interest purchase plans since the maximum subscription limit was increased in 2009 than in the years when the limit was lower (see paragraphs 91–94 of [Report 446](#) *ASIC regulation of corporate finance: January to June 2015* (REP 446);
  - (b) the real value of the \$15,000 monetary limit has not been sufficiently eroded by inflation to warrant an increase; and
  - (c) we have not seen a pressing commercial need to increase the monetary limit, which is in part informed by:
    - (i) a lack of applications for relief being lodged with ASIC seeking to undertake a share or interest purchase plan that exceeds the monetary limit; and
    - (ii) the prevalence of companies raising funds under a rights offer using a ‘cleansing notice’ (see s708AA).
- 16 We invite submissions on:
- (a) whether [CO 09/425] is currently operating effectively and efficiently and therefore should be remade; and
  - (b) whether the conditions of relief (including the \$15,000 limit per individual member in any consecutive 12-month period) should remain unchanged.

## Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange Limited
Ch 2M (for example)	A chapter of the Corporations Act (in this example numbered 2M), unless otherwise specified
[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
Div 5 (for example)	A division of the Corporations Act (in this example numbered 5), unless otherwise specified
interest purchase plan	An offer to existing investors of interests in a managed investment scheme listed on ASX
Product Disclosure Statement	A document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
Pt 3 (for example)	A part of the Corporations Act (in this example numbered 3), unless otherwise specified
s25 (for example)	A section of the Corporations Act (in this example numbered 25), unless otherwise specified
share purchase plan	An offer to existing investors of shares by a company listed on ASX
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect