



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 307

Remaking ASIC class order on warrants: Out-of-use notices—[CO 08/781]

December 2018

About this paper

This consultation paper sets out ASIC's proposal to remake our class order on the lodgement of out-of-use notices for warrant products in certain circumstances. Under the *Legislation Act 2003*, this class order will expire ('sunset') if not remade.

We are seeking feedback from warrant issuers, law firms, industry and other interested people on our proposal to remake, without significant changes, [Class Order \[CO 08/781\] Warrants: Out-of-use notices](#), which is due to expire on 1 April 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 13 December 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 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 6 February 2019 to:

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What will happen next?

Stage 1	13 December 2018	ASIC consultation paper released
Stage 2	6 February 2019	Comments due on the consultation paper
Stage 3	February–March 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 tenth 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.

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 financial consumer trust and confidence and ensuring markets are fair, orderly and transparent.
- 4 We will consult affected stakeholders on all ASIC legislative instruments that have more than a minor or machinery regulatory impact, 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 following 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 our proposed changes to the class order. 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 08/781] *Warrants: Out-of-use notices*, which sunsets on 1 April 2019.

We have formed the preliminary view that this class order is operating effectively and efficiently, and continues to form a necessary and 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 08/781], including whether [CO 08/781] is currently operating effectively and efficiently.
- 7 This proposal is only an indication of the approach we may take and is not our final policy.

Class Order [CO 08/781] *Warrants: Out-of-use notices*

Background

- 8 A Product Disclosure Statement or supplementary Product Disclosure Statement (PDS) for warrants does not need to be lodged with ASIC. However, an in-use notice must be provided when the PDS is first used. This is because warrants are not a product specified in s1015B of the *Corporations Act 2001* (Corporations Act).
- 9 If a PDS does not need to be lodged with ASIC, then s1015D(2)(c) of the Corporations Act requires a responsible person for the PDS (other than the trustee of a self-managed superannuation fund) to lodge a notice with ASIC, in electronic form, when the financial product to which the PDS relates is no longer available to be given in a recommendation, issue or sale situation (out-of-use notice).
- 10 The requirement in s1015D(2)(c) to lodge an out-of-use notice with ASIC:
 - (a) ensures that we have all the information we need about financial products in the market; and
 - (b) enhances protection for consumers by ensuring we can oversee all financial products that can be sold to investors.

- 11 However, the characteristics of a warrant in terms of the underlying security, expiry date and exercise price are such that each warrant in a PDS can be considered to constitute a separate financial product under Ch 7 of the Corporations Act. This means that, without the relief provided by [CO 08/781], the responsible person for a PDS covering two or more warrant products would have to lodge out-of-use notices frequently.
- 12 [CO 08/781] allows the responsible person to delay lodging an out-of-use notice with ASIC until the time when all the warrant products offered under a PDS cease to be available. A PDS for warrant products frequently offers more than one warrant product.
- 13 As stated in [Regulatory Guide 197 Warrants: Out-of-use notices](#) (RG 197) at RG 197.8, we consider that having to lodge multiple out-of-use notices for two or more warrant products in these circumstances is disproportionately burdensome compared to the regulatory benefit of these notices.
- 14 However, even with the relief in [CO 08/781], the responsible person will eventually need to lodge an out-of-use notice with ASIC when all the warrants to which the PDS relates are no longer available to be given to new clients in a recommendation, issue or sale situation.

Proposal

- B1** To preserve its effect beyond the sunset date of 1 April 2019, we propose to:
- (a) continue the relief currently given by [CO 08/781] in a new legislative instrument that reflects current drafting practice, without any significant changes; and
 - (b) update [RG 197](#) in relation to the new legislative instrument.

You can access the current instrument at www.legislation.gov.au by clicking on the following direct link: [\[CO 08/781\]](#).

The only changes proposed to the instrument are to:

- (c) update the name of the instrument; and
- (d) reflect current drafting practice and update the format of the current document.

Rationale

- 15 We have reached the preliminary view that [CO 08/781] is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework. We are not aware of significant issues with the current operation of this class order.

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
PDS	A Product Disclosure Statement or supplementary 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.
responsible person	Has the meaning given in Div 2 of Pt 7.9 of the Corporations Act Note: See s1013A(3) for the exact definition.
RG 197 (for example)	An ASIC regulatory guide (in this example numbered 197)
RIS	Regulation Impact Statement
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
warrant	A financial product as defined in reg 1.0.02(1) of the Corporations Regulations