



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 349

Remaking ASIC class order on PDS requirements where a general insurance quote is given: [CO 11/842]

November 2021

About this paper

This consultation paper sets out ASIC's proposal to remake, without significant changes, [Class Order \[CO 11/842\]](#) *PDS requirements where a quote for a general insurance product is given*.

Under the *Legislation Act 2003*, this class order will be automatically repealed ('sunset') on 1 April 2022 if it is not remade. We seek your feedback on our proposal.

Note: The draft ASIC instrument, which reflects the minor amendments proposed in this paper, is available on our website at www.asic.gov.au/cp under CP 349.

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 15 November 2021 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 **17 December 2021** to:

co11.842@asic.gov.au

What will happen next?

| | | |
|----------------|------------------|--|
| Stage 1 | 15 November 2021 | ASIC consultation paper released |
| Stage 2 | 17 December 2021 | Comments due on the consultation paper |
| Stage 3 | 1 April 2022 | Commencement of remade instrument(s) |

A Background

Key points

Legislative instruments, such as class orders, are repealed automatically, or 'sunset', after 10 years, unless action is taken to preserve them.

We consult on sunsetting legislative instruments that have more than a minor or machinery regulatory impact.

Purpose of 'sunsetting' legislative instruments

- 1 Under the *Legislation Act 2003*, legislative instruments are automatically repealed, or 'sunset', after 10 years, unless action is taken to 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. 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 sunsetting 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 vision of a fair, strong and efficient financial system for all Australians.
- 4 We consult affected stakeholders on ASIC legislative instruments that have more than a minor or machinery regulatory impact, and are subject to sunsetting, 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 Regulatory Impact Analysis. We will review, including following public consultation, all class orders that have a significant regulatory impact before the scheduled sunset date.
- 6 Where our review finds that a class order is not operating effectively and efficiently, we will undertake regulatory impact analysis 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 and without preparing a RIS.

B Remaking ASIC class order [CO 11/842]

Key points

We are proposing to remake [Class Order \[CO 11/842\]](#) *PDS requirements where a quote for a general insurance product is given*, which sunsets on 1 April 2022.

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 has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument. The draft ASIC instrument, which reflects the minor amendments proposed in this paper, is available on our website at www.asic.gov.au/cp under CP 349.

Your feedback

- 7 You are invited to comment on our proposal to remake [CO 11/842], including whether the class order is currently operating effectively and efficiently. Our proposal is only an indication of the approach we may take and is not our final policy.

Class Order [CO 11/842] *PDS requirements where a quote for a general insurance product is given*

- 8 Before the introduction of [\[CO 11/842\]](#), ASIC received submissions from the general insurance industry that the requirement in s1012B(3) of the *Corporations Act 2001* (Corporations Act)—to give a Product Disclosure Statement (PDS) at or before the time an offer to issue a general insurance product is made to a retail client—prevented general insurers and their authorised representatives from providing quotes for the premium payable on a particular general insurance product during telephone calls.
- 9 Retail clients often seek quotes for general insurance products during telephone calls to help them compare products. Not being able to obtain a quote may inconvenience consumers and inhibit their ability to quickly and easily get information about the final price of a general insurance product. Such information is useful when comparing products offered by different general insurers.
- 10 The relief provided by [\[CO 11/842\]](#) has been given to address practical difficulties in giving a PDS during a telephone call and to allow the continued provision of quotes to retail clients over the telephone.

- 11 [\[CO 11/842\]](#) applies the requirement to give a PDS differently depending on whether the client wants to be given a PDS at or around the time the quote is given. Under the relief, the client can choose to receive the PDS, and, if they do, the general insurer or intermediary must give a PDS as soon as practicable after the quote is given. This means that the PDS can be given after the telephone call.
- 12 The class order does not affect the time at which a PDS must be given if a quote is given during an unsolicited telephone call, or if the quote is otherwise unsolicited by the retail client.
- 13 [\[CO 11/842\]](#) seeks to balance the consumer protection interest of retail clients, the promotion of competition and industry concerns about compliance costs.

Proposal

- B1** To preserve its effect beyond the sunset date of 1 April 2022, we propose to continue the relief currently given by [Class Order \[CO 11/842\]](#) *PDS requirements where a quote for a general insurance product is given* in a new legislative instrument that reflects current drafting practice, but without any significant changes.

Note: See *ASIC Corporations (PDS requirements where a quote for a general insurance product is given) Instrument 2022/<XX>* attached to this consultation paper.

- B2** The proposed changes are to:
- reflect current drafting practice and update the format of the current document;
 - simplify the drafting to give greater clarity; and
 - provide a five-year sunset period.

Your feedback

- B2Q1 Is [\[CO 11/842\]](#) currently operating effectively and efficiently and should it therefore be remade?
- B2Q2 Should the conditions of relief remain unchanged?
- B2Q3 Should the remade instrument remain in force for five years or for a different period of time?

Rationale

- 14 We have reached the preliminary view that [\[CO 11/842\]](#) 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 are still appropriately calibrated, and our preliminary view is that they are.
- 16 We propose a five-year sunset period as this will provide sufficient time for a thorough review of the instrument to occur and, if required, progress to be made in amending the primary law or regulations.

Key terms

| Term | Meaning in this document |
|---------------------------|---|
| ASIC | Australian Securities and Investments Commission |
| [CO 11/842] (for example) | An ASIC class order (in this example numbered 11/842) 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 |
| PDS | A 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. |
| 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 |