



ASIC

Australian Securities &
Investments Commission

CONSULTATION PAPER 369

Remaking ASIC class orders on platforms: [CO 13/762] and [CO 13/763]

March 2023

About this paper

This consultation paper sets out ASIC's proposals to remake our class orders on platforms. Under the *Legislation Act 2003*, these class orders will expire ('sunset') if not remade.

We are seeking feedback from the investment management sector on our proposals to remake, without significant changes, the following class orders, which are due to expire on 1 October 2023:

- [Class Order \[CO 13/762\]](#) *Investor directed portfolio services provided through a registered managed investment scheme*; and
- [Class Order \[CO 13/763\]](#) *Investor directed portfolio services*.

Note: The draft ASIC instruments are available on our website at www.asic.gov.au/cp under CP 369.

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 28 March 2023 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

You are invited to comment on the proposals in this paper to remake these ASIC class orders, including whether they are currently operating effectively and efficiently. These proposals are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, please describe any alternative approaches you think would achieve our objectives. We are keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account.

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 April 2023 to:

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Investment Managers, Financial Services and Wealth
Australian Securities and Investments Commission
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What will happen next?

Stage 1	28 March 2023	ASIC consultation paper released
Stage 2	28 April 2023	Comments due on the consultation paper
Stage 3	1 July 2023	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 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 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 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 vision of a fair, strong and efficient financial system for all Australians.
- 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 that:
 - (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 orders

Key points

We are proposing to remake:

- [Class Order \[CO 13/762\]](#) *Investor directed portfolio services provided through a registered managed investment scheme*, which sunsets on 1 October 2023; and
- [Class Order \[CO 13/763\]](#) *Investor directed portfolio services*, which sunsets on 1 October 2023.

We have formed the preliminary view that these class orders are operating effectively and efficiently, and continue to form a necessary and useful part of the legislative framework.

Each class order has been redrafted using ASIC's current style and format, while preserving the current effect of the instrument.

We are proposing that the new legislative instruments will have a term of five years with an expiry date of 1 October 2028.

Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme*

Background

- 7 An investor directed portfolio service (IDPS) provided through a registered managed investment scheme is known as an 'IDPS-like' scheme. In IDPS-like schemes:
 - (a) members are allowed to direct that an amount of money be invested in specific investments available through the scheme; and
 - (b) members receive capital and income distributions in relation to their interests in the scheme (the distributions are determined by reference to amounts received by the responsible entity or a custodian in relation to the investments acquired under the members direction).
- 8 [Regulatory Guide 148](#) *Platforms that are managed investment schemes and nominee and custody services* (RG 148) sets out ASIC's overriding objectives in regulating platforms.
- 9 To achieve the regulatory objectives set out in RG 148, [\[CO 13/762\]](#) modifies provisions of the *Corporations Act 2001* (Corporations Act) and provides responsible entities relief from some of the managed investment scheme, fundraising, financial product disclosure and other investor rights provisions.
- 10 Australian financial services (AFS) licensees that are licensed to operate a platform (IDPS-like schemes) must comply with [\[CO 13/762\]](#).

Proposal

- B1** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [\[CO 13/762\]](#), without any significant changes:
- (a) in a new legislative instrument that reflects current drafting practice and format; and
 - (b) with an expiry date of 1 October 2028.

See draft *ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/XX* at Attachment 1 to this consultation paper.

Your feedback

- B1Q1 Do you agree with our proposal? If not, why not?
- B1Q2 Are you aware of any significant issues with the operation of this class order? If so, please explain.

Rationale

- 11 We have reached the preliminary view that [\[CO 13/762\]](#) 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.
- 12 We will remake [CO 13/762] as an ASIC instrument to enable platforms to operate as intended.
- 13 We are proposing to give the instrument an effective period of five years. We consider this period will provide sufficient certainty for industry.

Class Order [CO 13/763] *Investor directed portfolio services*

Background

- 14 IDPS schemes are unregistered managed investment schemes for holding and dealing with investments selected by investors.
- 15 An IDPS has the following features:
 - (a) Investors decide what assets will be acquired or disposed of, with limited exceptions.
 - (b) The IDPS provides custody, settlement and reporting services.
 - (c) Subject to any exceptions, investors can direct an IDPS operator to transfer assets and realise assets held on behalf of the investor.

- (d) Investors may receive benefits in the form of access to investments that they could not otherwise access directly, and cost savings through the netting of transactions or pooling of funds.
- 16 [CO 13/763] establishes the regulatory framework for IDPSs. The class order recognises that, unlike responsible entities of managed investment schemes, IDPS operators do not make investment decisions, as the decisions are ‘investor directed’. It also exempts IDPSs from the requirement to be a registered managed investment scheme.
- 17 To achieve the objectives for the regulation of IDPSs as set out in [RG 148](#), [CO 13/763] provides IDPS operators with relief from provisions of the Corporations Act and modifies Pt 7.6 as it applies to IDPS operators.

Proposal

B2 To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [\[CO 13/763\]](#), without any significant changes:

- (a) in a new legislative instrument that reflects current drafting practice and format; and
- (b) with an expiry date of 1 October 2028.

See draft *ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/XX* at Attachment 2 to this consultation paper.

Your feedback

- B2Q1 Do you agree with our proposal? If not, why not?
- B2Q2 Are you aware of any significant issues with the operation of this class order? If so, please explain.

Rationale

- 18 We have reached the preliminary view that [\[CO 13/763\]](#) 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.
- 19 We will remake [CO 13/763] as an ASIC instrument to enable platforms to operate as intended.
- 20 We are proposing to give the instrument an effective period of five years.

Key terms

Term	Meaning in this document
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
[CO 13/762] (for example)	An ASIC class order (in this example numbered 13/762) 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
IDPS	An investor directed portfolio service as defined in [CO 13/763]
IDPS-like scheme	An investor-directed-portfolio-services-like scheme as defined in [CO 13/762]
IDPS operator	A public company that is a holder of an AFS licence that is authorised to operate an IDPS and who provides an IDPS or a function that forms part of the IDPS
managed investment scheme	Has the meaning given in s9 of the Corporations Act
platform	An IDPS and IDPS-like scheme. Note: This term does not extend to nominee and custody services, superannuation master trusts or other superannuation funds, self-managed superannuation funds, or managed discretionary accounts as defined in Regulatory Guide 179 <i>Managed discretionary accounts</i> (RG 179).
Pt 7.6 (for example)	A part of the Corporations Act (in this example numbered 7.6), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
RIS	Regulation Impact Statement
s9 (for example)	A section of the Corporations Act (in this example numbered 9), unless otherwise specified
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect

List of proposals and questions

Proposal	Your feedback
<p>B1 To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/762], without any significant changes:</p> <ul style="list-style-type: none"> (a) in a new legislative instrument that reflects current drafting practice and format; and (b) with an expiry date of 1 October 2028. <p>See draft <i>ASIC Corporations (Investor Directed Portfolio Services Provided Through a Registered Managed Investment Scheme) Instrument 2023/XX</i> at Attachment 1 to this consultation paper.</p>	<p>B1Q1 Do you agree with our proposal? If not, why not?</p> <p>B1Q2 Are you aware of any significant issues with the operation of this class order? If so, please explain.</p>
<p>B2 To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/763], without any significant changes:</p> <ul style="list-style-type: none"> (a) in a new legislative instrument that reflects current drafting practice and format; and (b) with an expiry date of 1 October 2028. <p>See draft <i>ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/XX</i> at Attachment 2 to this consultation paper.</p>	<p>B2Q1 Do you agree with our proposal? If not, why not?</p> <p>B2Q2 Are you aware of any significant issues with the operation of this class order? If so, please explain.</p>