

# ASIC CLASS ORDER [CO 08/781]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 08/781] under paragraph 1020F(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(a) provides that ASIC may exempt a person or class of persons from specified provisions of Part 7.9 of the Act.

### 1. Background

Section 1015B of the Act requires that a Product Disclosure Statement (PDS) and a supplementary PDS which relate to managed investment products that are tradeable on a financial market, or which state or imply that the products are tradeable on a financial market, must be lodged with ASIC before they can be given to a client.

If a PDS or a supplementary PDS does not need to be lodged with ASIC under section 1015B of the Act then paragraph 1015D(2)(a) of the Act requires that a responsible person for the PDS, except in the case of a supplementary PDS, must lodge a notice with ASIC when a PDS is first given to someone in a recommendation, issue or sale situation (in-use notice).

If a PDS or a supplementary PDS does not need to be lodged with ASIC under section 1015B of the Act then paragraph 1015D(2)(c) of the Act requires that a responsible person for the PDS (other than the trustee of a self managed superannuation fund) must lodge a notice with ASIC when the financial product to which the PDS or supplementary PDS relates is no longer available to be given in a recommendation, issue or sale situation (out-of-use notice). A responsible person notifies ASIC of each such circumstance by lodging a Form FS 90 *Notice that a product in a PDS has ceased to be available* with ASIC.

The objective behind paragraph 1015D(2) of the Act is to:

- Ensure ASIC is aware of all financial product information that it requires to be useful;
- Minimise the cost to business in providing this information; and
- Enhance protection of consumers by ensuring ASIC has regulatory oversight of all financial products able to be sold to investors.

## **2. Purpose of the class order**

### **What is the problem addressed by the class order?**

A warrant is a financial product as defined in reg 1.0.02(1) of the *Corporations Regulations 2001*. The characteristics of a warrant in terms of the underlying security, expiry date and exercise price, is such that each warrant in a PDS or supplementary PDS can be considered to constitute a separate financial product under Chapter 7 of the Act. Therefore the operation of paragraph 1015D(2)(c) of the Act has the unintended consequence that a responsible person of a PDS or supplementary PDS for a series of warrants has to lodge out-of-use notices frequently, which is disproportionately burdensome compared to the regulatory benefit of these notices.

### **Why is a class order necessary to address this problem?**

The purpose of [CO 08/781] is to minimise the burden on warrant issuers of complying with paragraph 1015D(2)(c) of the Act by modifying the lodging requirements for out-of-use notices. ASIC considers that the relief is consistent with the policy objectives of section 1015D of the Act.

## **3. Operation of the class order**

Paragraph 5 of [CO 08/781] provides an exemption to a responsible person who has a PDS or supplementary PDS for warrants from the requirement to lodge an out-of-use notice with ASIC until all the warrants to which the PDS or supplementary PDS relates, cease to be available to be recommended or offered to new clients in a recommendation, issue or sale situation.

### **Where relief applies**

The exemption will only apply where:

- (a) a document has set out in it 2 or more product disclosure statements (that includes 2 or more separate documents given at the same time) or supplementary product disclosure statements for warrants; and
- (b) the responsible person for each product disclosure statement and supplementary product disclosure statement is the same.

## **4. Consultation**

ASIC did not consult with outside parties as the relief in [CO 08/781] is considered to be of a minor or machinery nature.