



**ASIC**  
Australian Securities &  
Investments Commission

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Mr Wayne Poels  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister  
and Cabinet  
1 National Circuit  
BARTON ACT 2600

Our Reference: ELT/19/2ELK/0001

By email: [Helpdesk-OBPR@pmc.gov.au](mailto:Helpdesk-OBPR@pmc.gov.au)

4 March 2019

Dear Mr Poels

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

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding the following Australian Securities and Investments Commission (**ASIC**) Class Order [CO 08/781] *Warrants: Out of use notices* (CO 08/781). CO 08/781 will sunset on 1 April 2019. ASIC proposes to continue the relief currently given by [CO 08/781] in a new legislative instrument that reflects current drafting practice, without any significant changes.

### **Effect and purpose of ASIC CO 08/781**

#### **Background**

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).

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).

Paragraph 1015D(2)(c) of the Corporations Act was enacted under Part 4 of the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007 (Cth) (SRS Act)*. The policy objectives behind subsection 1015D(2) of the Corporations Act as outlined in the Explanatory Memorandum to the SRS Act are to:

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

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.

### ***Effect of [CO 08/781]***

[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.

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.

### **Certification of [CO 08/781]**

ASIC certifies that [CO 08/781] is operating efficiently and effectively, and therefore a Regulation Impact Statement is not required for [CO 08/781] to be remade without any significant changes into a new

legislative instrument reflecting current drafting practice. This certification has been informed by:

- a review of ASIC's records concerning lodgements of out of use notices, enquiries, applications for relief and reports of misconduct; all of which did not indicate any issues concerning the operation or effectiveness of [CO 08/781].
- the release of Consultation Paper 307: *Remaking ASIC class order on warrants: Out-of-use notices [CO 08/781] (CP 307)*, which sought feedback by 6 February 2019 on our proposals to remake [CO 08/781] without significant changes. ASIC received no comments or submissions on CP 307.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Elizabeth Korpi on (02) 9911 2481, or [Elizabeth.Korpi@asic.gov.au](mailto:Elizabeth.Korpi@asic.gov.au).

Yours sincerely



**Paul Eastment**  
**Acting Senior Executive Leader**  
**Investment Managers**