



ASIC
Australian Securities &
Investments Commission

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and Investments Commission**

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Mr Jason Lange
Executive Director
Office of Best Practice Regulation
Department of Prime Minister and Cabinet
1 National Circuit
BARTON
ACT 2600

Our Reference: Project Remaking
Debentures LI

8 November 2021

Dear Mr Lange

I am writing to the Office of Best Practice Regulation (OBPR) regarding [ASIC Class Order \[CO 12/1482\]](#) (**Instrument**).

Where an issuer offers debentures with first ranking security that do not satisfy the more stringent “debenture” or “mortgage debenture” naming tests of s283BH of the *Corporations Act 2001 (Act)*, the issuer is required to refer to their securities as “unsecured notes”. The Instrument inserts a separate “secured notes” category into section 283BH, which can be relied on where security has been provided over intangible property, subject to various conditions.

Under the *Legislation Act 2003*, the Instrument is scheduled to sunset on 1 April 2022. However, the Australian Securities and Investments Commission (**ASIC**) has determined that the Instrument should be remade without significant amendment. This letter certifies that the Instrument is operating effectively and efficiently, and that therefore a *Regulation Impact Statement* is not required for this Instrument to be remade.

The assessment that the Instrument is operating effectively and efficiently has been informed by:

- a) a consultation process (see [Consultation Paper 344: Remaking ASIC class order on when debentures can be called secured notes: \[CO 12/1482\]](#)), to which we received one response that was supportive of our proposal to remake the Instrument without significant amendment; and
- b) ASIC’s own research and analysis, which indicates that the Instrument is currently being relied upon without any issues.

There will be no cost or regulatory burden to industry as a result of remaking the Instrument. However, if the Instrument is allowed to sunset, regulatory costs would be

imposed as issuers must either make applications for individual relief under section 283GB of the Act or refer to their securities as “unsecured notes”.

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

If you have any queries about this advice, please contact [REDACTED]

Yours sincerely



Claire LaBouchardiere
Senior Executive Leader – Corporations
Australian Securities and Investments Commission