



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 197

Warrants: Out-of-use notices

November 2008

About this guide

This guide is for issuers of warrants offered under a Product Disclosure Statement (PDS) or Supplementary PDS covering two or more warrant products.

It explains relief ASIC has given in certain circumstances from the requirement in s1015D(2)(c) of the *Corporations Act 2001* (Corporations Act) to notify ASIC when a warrant ceases to be available.

Note: A warrant is a financial product as defined in reg 1.0.02(1) of the Corporations Regulations 2001.

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 version was issued on 4 November 2008 and is based on legislation and regulations as at 4 November 2008.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

ASIC relief for warrants: lodging out-of-use notices

Key points

If you are the responsible person for a PDS or Supplementary PDS for warrants, you must lodge a notice with ASIC when each warrant ceases to be available to be recommended or offered to new clients: s1015D(2)(c).

Our relief under Class Order (CO 08/781) *Warrants: Out-of-use notices* reduces the burden of complying with this requirement where warrants are offered in a PDS or Supplementary PDS covering two or more warrant products.

When must you lodge an out-of-use notice?

RG 197.1 A PDS or Supplementary PDS for warrants does not need to be lodged with ASIC. This is because warrants are not a product specified in s1015B.

Note: Under s1015B, a PDS or Supplementary PDS must be lodged with ASIC if it:

- (a) is for managed investment products that can be traded on a financial market; or
- (b) states or implies that a managed investment product will be able to be traded on a financial market.

RG 197.2 However, the responsible person for the PDS or Supplementary PDS must lodge a notice with ASIC when:

- (a) a copy of the PDS is first given to someone in a recommendation, issue or sale situation (in-use notice: see s1015D(2)(a)); and
- (b) 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: see s1015D(2)(c)).

Note: These requirements do not apply if the responsible entity for the PDS or Supplementary PDS is the trustee of a self-managed superannuation fund.

What is the purpose of an out-of-use notice?

RG 197.3 The requirement in s1015D(2)(c) to lodge an out-of-use notice with ASIC:

- (a) ensures that ASIC has all the information we need about financial products in the market;
- (b) minimises the cost to business in providing this information; and
- (c) enhances protection for consumers by ensuring we can oversee all financial products that can be sold to investors.

What relief is available?

- RG 197.4 Under our relief in Class Order (CO 08/781), the responsible person need only lodge an out-of-use notice with ASIC when all the warrants in a PDS or Supplementary PDS covering two or more warrant products cease to be available.
- RG 197.5 Our relief in CO 08/781 applies in the circumstances where:
- (a) the PDS or Supplementary PDS (this may include two or more separate documents given at the same time) covers two or more warrant products; and
 - (b) the responsible person for each PDS and Supplementary PDS is the same.

What are the benefits of our relief?

- RG 197.6 For issuers of warrants, CO 08/781 minimises the burden of complying with the requirement in s1015D(2)(c) to lodge out-of-use notices with ASIC, while maintaining the policy objectives of this requirement.
- RG 197.7 Each warrant in a PDS or Supplementary PDS is generally considered to constitute a separate financial product under Ch 7 of the Corporations Act. This means that, without the relief in CO 08/781, the responsible person for a PDS or Supplementary PDS covering two or more warrant products would have to lodge out-of-use notices frequently.
- RG 197.8 We consider that having to lodge multiple notices for two or more warrant products in these circumstances is disproportionately burdensome compared to the regulatory benefit of these notices.

How do you lodge an out-of-use notice?

- RG 197.9 Even with the relief in CO 08/781, you will eventually need to lodge an out-of-use notice with ASIC. To lodge a notice, use Form FS90 *Notice that a product in a Product Disclosure Statement has ceased to be available with ASIC*.

Note: For a copy of Form FS90, go to www.asic.gov.au/forms#fs.