



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 40

Good transaction fee disclosure for bank, building society and credit union deposit and payments products (transaction accounts)

June 2002

About this document

This Guide is designed to promote improved disclosure of transaction fees for retail payments and deposit products (transaction accounts) offered by banks, credit unions and building societies. ASIC's aim in producing the Guide is to provide an easy reference for institutions and consumers to current transaction fee disclosure requirements contained in legislation and self-regulatory instruments as well as ASIC's views on what constitutes good transaction fee disclosure practice. We hope it will encourage ever improving fee disclosure practices so that consumers are in an informed position about how best to manage the cost of their banking. In writing the Guide we have sought to create a reasonable balance between the needs of consumers to have clear and timely fee information and the costs of delivering such information.

The Guide was written against a background of considerable activity in the area of disclosure and transaction accounts.¹ Its content is a summary of legal and self-regulatory requirements as of 26th June 2002 – in particular, the requirements in:

- The financial services reforms. These reforms are contained in the Corporations Act 2001 (as amended by the Financial Services Reform Act 2001) and the Corporations Regulations 2001 (as amended by a series of Corporations Amendments Regulations issued in 2001 and 2002)².
- The Uniform Consumer Credit Code (UCCC).
- Various codes applicable to banks, building societies and credit unions.

As noted in the Guide, the requirements of the Financial Services Reforms won't apply to existing products until two years after 11 March 2002 unless an institution opts in at an earlier time.

The material on self-regulatory codes is likely to change during 2002.

The contents of this Guide do not constitute legal advice. Every effort has been taken to ensure that the Guide correctly summarises the law as at the 26th June 2002, however, institutions should always check applicable legal requirements for themselves.

¹ More recently, the focus on fee disclosure has extended to other financial products, in particular, investment linked products such as superannuation, managed investments and investment linked life insurance. Fee disclosure for these other financial products is currently the subject of a separate project announced by ASIC on 20 December 2001 in Media Release 01/487.

² References to sections and regulations in this Guide are references to sections of the Corporations Act 2001 and regulations in the Corporations Regulations 2001.

Executive summary

This Guide sets out ASIC's views on what constitutes good fee disclosure practices by banks, building societies and credit unions in relation to deposit and payments products (transaction accounts).

ASIC produced the Guide because evidence suggests that many consumers do not understand the fees that currently apply to their transaction accounts and would like better disclosure either to guide their own habits or because they think others will benefit from it.³

The content of the Guide was developed with the assistance of a working group of industry, consumer and government representatives (see Appendix A). The Guide also incorporates relevant legislative and self-regulatory requirements.

In ASIC's view, improvements to transaction fee disclosure are important if consumers are to be able to make choices between transaction products and providers on the basis of price and conduct their banking so as to minimise fees. They are also important if pricing competition is to be encouraged. We have been pleased to see that since the process of drafting this Guide commenced, a number of important improvements to disclosure practices have already occurred.

There are five times at which transaction fee disclosure is particularly relevant:

- at the time a consumer is selecting a product or product provider;
- when changes are made to the level of fees or when, why or how they are charged;
- when a statement is received;
- when a consumer is actively seeking information (this time may coincide with one of the other 4 times); and
- immediately prior to making a transaction.

This Guide discusses options for good transaction fee disclosure in relation to these 5 times. The text is based upon the following 5 general principles of good disclosure.⁴

- **Pre-contractual disclosure** - At the time a consumer is selecting a product or product provider they should have access to information about all fees and charges that will apply to the product, when they will be incurred and factors impacting upon their level and imposition;
- **Notice of changes** - Consumers should be provided with personally addressed written notice, about any changes to fee amounts or the conditions for incurring fees, and the effect of those changes, in sufficient time before the changes occur to allow them to make any alterations they deem necessary to

³ This view was confirmed in research undertaken for ASIC by Chant Link in 2000 on consumers' understanding of the fees and charges they pay and what they would like in terms of disclosure.

⁴ These principles are consistent with the good disclosure principles in Policy Statement 168: Disclosure: Product Disclosure Statements (and other disclosure obligations) but have been formulated specifically for transaction accounts. Institutions should also have regard to Policy Statement 168.

their banking arrangements or providers. Written notice can be in an electronic form if the consumer so elects.

- **Disclosure on statements** - Included on the statements of customers who are potentially liable to pay fees should be clear information about transactions undertaken and any fees incurred during the period. This information should not be bundled. It should clearly show the cost of each transaction per different delivery channel and the number of such transactions undertaken. The impact of any free transaction limit, rebate scheme or other relationship variable should also be reflected in the summary.
- **Disclosure following a specific request** - Consumers should have access to information about the fee structures which apply to transaction accounts through a range of access methods at the time that they seek it.
- **Disclosure at the time of the transaction, including of transaction fees, foreign ATM fees, surcharges and of overdraw fees** – Ideally, consumers should have optional access to information relevant to the cost of a specific transaction immediately prior to deciding whether or not to undertake the transaction.

It is recognised that because of the costs associated with complying with this last principle, it may be some time before many institutions are in a position to meet it.

The Guide also discusses matters relating to the administration of the Guide.

The issue of fee disclosure is a topical one and it is possible that there will be further legislative and self-regulatory initiatives that will fall within the scope of this Guide. In particular, the provisions of the Banking Code of Conduct, and possibly other payments system codes, are likely to change in 2002. The Guide will therefore be a living document which will be reviewed from time to time. The content of this version summarises the relevant law as at 26th June 2002.

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Purpose and status of the Guide

1. What is the purpose of the Guide?

This Guide is designed to promote improved disclosure of transaction fees for retail payments and deposit products (transaction accounts) offered by banks, building societies and credit unions. Parts of the Guide will also be relevant for credit products if transaction fees are, or can be, imposed.⁵

This Guide is intended to be an all in one source of information for institutions and consumers on the fee disclosure requirements of legislation and self-regulatory instruments and of ASIC's views on good practice.

2. What status do the provisions of this Guide have?

The status of the provisions of the Guide vary depending upon whether they:

- refer to legislation which binds all parties it applies to;
- refer to self-regulatory requirements which must be complied with by all parties to the self-regulatory instrument;
- are ASIC's views on how best to comply with these legislative or self-regulatory requirements; or
- are none of the above, but are a statement of what ASIC considers to be good practice, in which case compliance will normally be voluntary.

Pre-contractual disclosure

3. The Good Disclosure Principle.

At the time a consumer is selecting a product or product provider they should have access to information about all fees and charges that will apply to the product, when they will be incurred and factors impacting upon their level and imposition.

4. Why do consumers need pre-contractual transaction fee disclosure?

Consumers need pre-contractual disclosure of transaction fee information to enable them to compare products and choose the appropriate product and service provider for their needs.

⁵ Disclosure requirements under the Corporations Act and Regulations, referred to in this Guide, do not generally apply to credit products.

5. What are the legislative requirements?

Prior to 11 March 2002, there were no legislative requirements in effect for pre-contractual transaction fee disclosure for transaction accounts. This has changed so that new pre-contractual transaction fee disclosure requirements will apply to deposit products:

- (a) when the transition period provided for under the Corporations Act 2001 expires on 11 March 2004 (section 1438(3)(a)); or
- (b) on the date specified in a notice lodged with ASIC by a product issuer who elects to be subject to the new product disclosure provisions during the transition period for a particular product (section 1438(3)(b)),

whichever is the earlier.⁶ These transitional arrangements do not apply to products offered by new financial institutions that came into being on or after 11 March 2002.

From then, a retail client must generally be given a Product Disclosure Statement (PDS) before they acquire a transaction account (see Section 1012A, 1012B, 1012D and 1012G). Under Section 1013D(1)(d)(ii) the PDS is required to include information about “any amounts that will or may be payable by a holder of the product in respect of the product after its acquisition, and the times at which those amounts will or may be payable”. Under regulation 7.9.72A, the requirement to show the amount payable can be satisfied if the PDS gives the basis on which the amount of liability would be calculated rather than specifying the actual figure. Additional information must also be provided to retail customers before they acquire a transaction account, if they request it (section 1017A(1)).

The Uniform Consumer Credit Code (UCCC) includes requirements for pre-contractual disclosure for credit products (s. 14(1)). Included in this disclosure must be those matters required by s15 to be in the contract. Section 15G requires the disclosure of:

- the credit fees and charges⁷ that are, or may become payable under the contract, and when each such fee or charge is payable, if ascertainable;
- the amount of any fee or charge if ascertainable, but if not, the method of calculation of the fee or charge, if ascertainable; and
- the total amount of credit fees and charges payable under the contract to the extent that it is ascertainable.

⁶ For more information about the new disclosure requirements and transitional arrangements see ASIC's Transition Guide – *Licensing and Disclosure: Making the transition to the FSR regime – An ASIC Guide*, Media Release 01/380.

⁷ Under the UCCC, "credit fees and charges" do not include interest charges or "any fees or charges that are payable to or by a credit provider in connection with a credit contract in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available." They also don't include government charges or enforcement expenses.

6. What are the self-regulatory requirements?

The situation with self-regulatory codes is presently in a state of flux.

Clause 4 of the Code of Banking Practice as at 26 June 2002 requires that:

A bank shall, before or at the time of providing a particular Banking Service to a Customer for the first time or otherwise on request by a Customer, make available to the Customer a schedule containing the Standard Fees and Charges which currently apply to the Banking Service.

The provisions in the Building Society and Credit Union Codes are similar. However, it should be noted that the Code of Banking Practice has just been reviewed. Should the reviewer's recommendation be followed in the revised Code, and we understand that it will be, then it is probable that from the date the revised Code becomes operational, this provision will only apply to credit products which are not regulated by the UCCC. The reviewer recommended the narrower application of the provision to avoid duplication with the financial services reforms which are now embodied in the Corporations Act 2001 and the Uniform Consumer Credit Code.

The Credit Union Code is presently also under review and it is probable that it will follow a similar course to that taken in the Banking Code of Practice on this issue.

Clause 2.3(a) of the revised Electronic Funds Transfer (EFT) Code provides that before an access method is first used the cardholder should be provided with documentation on:

Any charges for the issue or use of an access method, separate from activity or other charges applying to the account generally.⁸

7. What should be included in these pre-contractual disclosures if they are to be done well?

ASIC interprets these regulatory and self-regulatory requirements as meaning that pre-contractual fee disclosure should include:

- clear details of the fees per transaction, broken down by channels if different fees are charged depending upon the delivery mode;
- details of what does and does not constitute a transaction for fee charging purposes (eg are checking on an account balance, having a direct debit bounce or depositing a cheque transactions for the purposes of fees?);
- the details of any rebates scheme (including information on the factors that will affect the size of the rebate);
- the details of any free transaction scheme including any specific conditions applying to it (such as a limit on over-the-counter transactions);
- clear information on when the period for calculating rebates or counting free transactions commences and ends;

⁸ All references to the EFT Code are to the revised EFT Code which became fully operational on 1 April 2002.

- any balance minimums, or loyalty arrangements (such as having a mortgage with the institution), which impact upon the need to pay fees;
- any other conditions relevant to assessing the fees the consumer will have to pay; and
- information on when transaction and account keeping fees will be debited to the account so that consumers don't find themselves unknowingly overdrawn on their account.

ASIC's research on consumers' understanding of the fees they pay suggests that some consumers find it difficult to identify which fees apply to their account where the fees for all of an institution's products are listed in one long fee schedule. This suggests that good practice involves making every effort to provide fee information as part of the package of information about an individual product. The Product Disclosure Statements required under the Corporations Act 2001 will facilitate this. That said, information being available in one place on the fees applying to similar products offered by an institution may be helpful for comparison purposes. There is, therefore, still a useful role for easily understood information about the fees applying to a range of products.

Notice of change

8. The Good Disclosure Principle.

Consumers should be provided with personally addressed written notice, about any changes to fee amounts or the conditions for incurring fees, and the effect of those changes, in sufficient time before the changes occur to allow them to make any alterations they deem necessary to their banking arrangements or providers. Written notice can be in an electronic form if the consumer so elects.⁹

9. Why do consumers need notice of change?

Consumers need to be notified of changes to fee amounts or the conditions for incurring fees so that they can decide whether they wish to alter their practices or change products so as to avoid incurring additional costs or to minimise costs.

10. What are the legislative notice requirements?

Prior to 11 March 2001, there were no legislative notice requirements in effect for deposit accounts. New legislative notice requirements will apply to deposit products:

- (a) when the transition period provided for under the Corporations Act 2001 expires on 11 March 2004 (section 1438(3)(a)); or

⁹ Under section 1017B of the Corporations Act 2001, the ability to provide electronic notification is not dependent upon the customer electing to receive electronic notice. However, given the stage of usage of electronic forms of communication, good practice suggests that gaining the customers consent to receiving electronic notice is desirable. The principle also reflects the thinking behind clause 22.1 of the EFT Code which requires that consumers have made a positive election to receive information electronically before it can be so provided as a substitute for paper notification.

- (b) on the date specified in a notice lodged with ASIC by a product issuer who elects to be subject to the new product disclosure provisions during the transition period for a particular product (section 1438(3)(b)),

whichever is the earlier. These transitional arrangements do not apply to products offered by new financial institutions that came into being on or after 11 March 2002.

Under section 1017B(5) and (7) of the Corporations Act 2001, institutions will be required to give notice of an increase in fees or charges 30 days before the change takes effect.¹⁰ This requirement doesn't apply to fees and charges payable under Commonwealth or State/Territory law, (Note that section 1017B does not generally apply to credit products that are covered by the UCCC).

Section 1017B(4) makes it clear that the notice must give the consumer the information that is reasonably necessary for them to understand the nature and effect of the change or event.

Section 1017B(3) requires that the consumer must be notified in writing, electronically, or in the way specified in the regulations.

Under the section 61 (1) of the Uniform Consumer Credit Code credit providers must, not later than 20 days before a change in the amount of a credit fee or charge (including a new credit fee or charge), or a change in the frequency or time for payment of a credit fee or charge, give the consumer written notice setting out the particulars of the change. Section 61(2) provides that "notice relating to a change in the amount of a credit fee or charge (including a new credit fee or charge) may be given by publishing a notice in a newspaper but must then give particulars before or when the next statement is due." Advance notice is not required if the change reduces the customer's obligations (i.e. a fee is decreased).

11. What are the self-regulatory notice requirements

The situation with self-regulatory codes is presently is a state of flux.

Clause 9.1 of the Code of Banking Practice as at 26 June 2002 provides that:

When, in relation to a Banking Service, a Bank intends to introduce a fee or charge (other than a government charge), the bank shall provide written notice of the change to each affected Customer at least 30 days before it takes effect.

Clause 9.3, however, provides that:

A Bank shall notify affected Customers of variations to the Terms and Conditions (including a variation of Standard Fees and Charges or of an interest rate) in relation to a Banking Service by advertisement in the national or local media or in writing to affected Customers, no later than the day on which the variation takes effect.

The provisions of the Building Society and Credit Union Codes are similar.

¹⁰ A change or event which *might* result in an increase in fees or charges is treated as if it *would* result in an increase in fees or charges: section 1017B(7).

As noted, the Code of Banking Practice has been reviewed. The reviewer recommended that clauses 9.1 and 9.3 of the Code be amended so that they only apply to banking services which aren't regulated by the UCCC or the financial services reforms now embodied in the Corporations Act 2001. It is expected that the recommended approach will be adopted so as to avoid duplication between the code and legislation.

The Credit Union code is also under review and it is probable that they will take a similar approach once their review is completed and implemented.

Under the revised EFT Code, account institutions wishing to vary or modify the EFT Terms and Conditions to impose or increase charges relating solely to the use of an access method, or issue of an additional or replacement access method must provide written notification to the account holder, and allow a period of notice of at least 20 days (or where the applicable legislation requires a longer notice period, that longer period) before the change takes effect. (cl 3.1).

In practice this will mean that changes covered by the Corporations Act 2001 will require 30 days' notice and most others, including those covered by the UCCC, will require 20 days' notice.

12. What constitutes a change?

The types of changes which ASIC believe require adequate notice include:

- any increase in the level of fees;
- any new fees;
- any changes to minimum balance requirements which impact upon fees; and
- changes to other conditions relevant to the level of fees a consumer is liable to pay.

The disclosure regimes under the Corporations Act 2001 and UCCC only require prior notice of increases in fees, not decreases. In ASIC's view, however, good transaction fee disclosure requires notice of fee decreases as well as increases. This is because most transaction fee regimes vary depending upon the channel used, and a reduction in fees for a channel may suddenly make it a more attractive alternative than was previously the case. That said, the cost of communication is substantial. Unless otherwise required, where an institution is notifying a consumer about fee increases they should also notify of reductions at the same time. However, where reductions are not accompanied by increases, minimum good practice would be to provide notice of the change with the next statement and on online banking facilities and other locations where it is likely to come to the attention of consumers.

Good disclosure also requires that the notice of the change should highlight how the change differs from the previous arrangement. In ASIC's view, this would be good disclosure practice for section 1017B(4) of the Corporations Act 2001 which requires notices of changes to give consumers the information that is reasonably necessary for them to understand the nature and effect of the change or event." As

with all disclosures, the more personalised the notice of change is, the more effective it is likely to be.

Disclosure on statements

13. The Good Disclosure Principle.

Included on the statements of customers who are potentially liable to pay fees should be clear information about transactions undertaken and any fees incurred during the period. This information should not be bundled. It should clearly show the cost of each transaction per different delivery channel and the number of such transactions undertaken. The impact of any free transaction limit, rebate scheme or other relationship variable should also be reflected in the summary.

14. Why do consumers need transaction fee disclosure on statements?

Statements provide personalised information and are more likely to be read than other modes of communication, which are separated from the transaction. Statements can also provide an overall picture of an individual's transaction practices allowing consumers to see how they can change those practices to lower costs.

15. What are the legislative requirements?

Under the Corporations Act 2001, institutions must generally¹¹ provide a regular statement of account to holders of deposit products through which the holder makes an investment (section 1017D(1)). Under Regulation 7.9.75, a periodic statement must include the cost of a transaction, including the amount payable and amount of taxes and charges in relation to the transaction if the transaction has occurred during the reporting period and advice of the cost of the transaction has not been shown in a confirmation of transaction. In addition, a periodic statement must include the amounts paid by the holder in respect of the financial product during the reporting period and the times at which those amounts were paid. These requirements will apply:

- (a) when the transition period provided for under the Corporations Act 2001 expires on 11 March 2004 (section 1438(3)(a)); or
- (b) on the date specified in a notice lodged with ASIC by a product issuer who elects to be subject to the new product disclosure provisions during the transition period for a particular product (section 1438(3)(b)),

whichever is the earlier. These transitional arrangements do not apply to products offered by new financial institutions that came into being on or after 11 March 2002.

¹¹ Basic deposit products that are "passbooks" are not subject to the periodic statement requirement in section 1017D (regulation 10.2.208).

For credit products, the UCCC requires that periodic statements of account must be provided at regular intervals (s. 31(1)). The statement must include “particulars of any fees and charges debited to the debtor’s account during the statement period” (s. 32(F)).

16. What are the self-regulatory requirements?

The issue of disclosure of fees on statements is not dealt with in the Banking, Credit Union or Building Society Codes of Practice.

Clause 4.3(b) of the revised EFT code requires statements to show “any charges relating solely to the use of access method (identified as a separate line item).”

The substance of this provision wasn’t changed in the recent review of the Code because it was outside the review’s scope. While the meaning of this requirement is arguably ambiguous, the practice of most financial institutions that are members of the code is to disclose a total figure for the fees charged, rather than to break that disclosure down to show the costs of particular transactions.

17. Good practice for disclosure of transaction fees on statements

Fee summary information should, where relevant, be provided on transaction account statements to enable customers to make informed choices about how they conduct their transactions. This information should enable customers to clearly understand the fees, by distribution channels and number of transactions, which apply to their accounts during the charging period and other key relevant information. That is, separate fees should be separately shown, not bundled, and the basis on which charges are calculated should be explained. Foreign ATM fees should be included in the fee summary information. In meeting this principle, institutions are encouraged to respond with measures that are relevant to the needs of their customers.

The format of statement disclosure will necessarily vary according to the fee structure of the account. For example, some accounts have a number of free transactions, with the free transactions either calculated at the end of the period based on which were the most expensive or charged when the number of transactions exceeds the free limit. Other accounts charge for all transactions, but provide a fee rebate, the amount of which depends on the customer’s overall relationship with the institution.

Two examples of good statement disclosure are provided on the next pages. The illustrations deliberately include references to channels not used in the charging period since an important part of the educative effect of such statements is being able to compare the cost of channels, including those not presently being used by the person receiving the account. ASIC also believes that it is important that foreign ATM fees are included with the examples to highlight their relative cost. Another important issue with statement disclosure is ensuring that the charging period is clear and that other factors which impact upon fees and may be subject to change (such as minimum balance requirements) are clearly highlighted.

Ideally, any institution introducing improved statement disclosure will test proposed formats with focus groups that are representative of their customers.

When determining whether or not fee information should be included on a statement the key determinate should be whether or not the consumer pays fees or could potentially pay them (eg if they exceeded their allocated number of free transactions or rebate even if they haven't currently done so). If a particular product or customer is exempted from paying any fees then whether or not fee information is shown is an issue for the institution.

There is also evidence to suggest that customers find tips on how to reduce fees helpful. Statements are one place where such tips could usefully be delivered.

Example of good transaction disclosure for an account with a number of free transactions per month

Transaction Type	Total transactions	Free	Transactions Charged for	Cost per transaction	Total charged.
Cheque withdrawal	2	0	2	50c	\$1.00
Cheque deposit	1	0	1	50c	\$0.50
Own bank ATM withdrawal	4	2	2	65c	\$1.30
Other bank ATM withdrawal/inquiry	1	1	0	\$1.50	\$0.00
EFTPOS withdrawal	4	0	4	50c	\$2.00
Own bank mini statement	1	1	0	\$1.00	\$0.00
Over the counter withdrawal	1	1	0	\$2.50	\$0.00
Telephone banking	1	0	1	40c	\$0.40
BPAY instruction	2	0	2	40c	\$0.80
Internet banking	0	0	0	30c	\$0.00
Direct debit or periodic payment	0	0	0	40c	\$0.00
Total transaction fees					\$6.00
Total account keeping fees					\$5.00
Total fees payable					\$11.00

You are entitled to 5 free transactions per calendar month, of which there is a limit of two free over the counter transactions and two cheque withdrawals. We will include the more expensive transactions in your free allocation first. Note no account keeping fees apply if the minimum monthly balance is above \$2,000. Transaction fees are deducted from your account on XXXX date and account keeping fees on the first working day of the month. Call xxxxx for more information.

Example of good transaction fee disclosure for an account with a rebate system

Transaction type	Number of transactions	Cost per transaction	Amount charged
Cheque withdrawal	2	\$0.50	\$1.00
Cheque deposit	1	\$0.50	\$0.50
Own bank ATM withdrawal	4	\$0.65	\$2.60
Other bank ATM withdrawal/inquiry	1	\$1.50	\$1.50
EFTPOS withdrawal	4	\$0.50	\$2.00
Own bank mini statement	1	\$1.00	\$1.00
Over the counter withdrawal	1	\$2.50	\$2.50
Telephone banking	1	\$0.40	\$0.40
BPAY instruction	2	\$0.40	\$0.80
Internet banking	0	\$0.30	\$0.00
Direct debit or periodic payment	0	\$0.40	\$0.00
Total transaction fees			\$12.30
Transaction fees less monthly rebate of \$5.00			\$7.30
Monthly account keeping fee			\$5.00
Total fees payable			\$12.30

Each calendar month we will pay a minimum of \$5.00 worth of the fees you incur. We will give you an additional rebate of \$1.00 each month for every \$5,000 you have in other deposit or loan accounts with us. We will calculate your monthly rebate on the first day of the charging period. Note that no account keeping fees apply if the minimum monthly balance is above \$2,000. Transaction fees are deducted from your account on XXXX date and account keeping fees on the first working day of the month. Call xxxx for more information.

Disclosure on request.

18. Good disclosure principle

Consumers should have access to information about the fee structures which apply to transaction accounts through a range of access methods at the time that they seek it.

19. Why do consumers need transaction fee disclosure on request?

One of the keys to effective disclosure is getting information to consumers at the time that it is likely to be relevant to them. If consumers want information about the fee structure applying to their account then providing it at the time they seek it is likely to be the most useful way of ensuring that consumers have the information when they need it.

20. What are the legislative requirements?

While, as discussed above, there are legislative requirements for the provision of information about fees at particular times, there is no general legislative requirement to provide this information on demand for transaction accounts. There is, however, a more confined legislative requirement for providing additional information on request prior to acquiring a product (see section 1017A). Regulation 7.9.75 requires an annual periodic statement to include a statement that further information in relation to the product is available on request. The regulation does not set out any details on what further information must be made available on request. These arrangements will apply:

- (a) when the transition period provided for under the Corporations Act 2001 expires on 11 March 2004 (section 1438(3)(a)); or
- (b) on the date specified in a notice lodged with ASIC by a product issuer who elects to be subject to the new product disclosure provisions during the transition period for a particular product (section 1438(3)(b)),

whichever is the earlier. These transitional arrangements do not apply to products offered by new financial institutions that came into being on or after 11 March 2002.

21. What are the self-regulatory arrangements?

There are no current self-regulatory requirements to provide fee information on demand. In the recent review of the Banking Code of Practice, however, the reviewer has recommended that the code be amended to provide that:

A Bank shall provide expeditiously to any person on request:

- full particulars of fees and charges that are or may become payable for any banking service we provide.

As the wording of the recommendation is taken from the submission of the Australian Bankers' Association it seems likely that this provision will be included in the revised code and become binding on members from the date the revised code becomes operational.

22. What are ASIC's views about good practice?

In addition to being able to request a PDS at branches, ASIC believes that other delivery channels should also be capable of responding to requests for information about fees. In saying this, however, it is recognised that some channels are more suited to this purpose than others. Internet banking channels, for example, are ideal for this type of disclosure. EFTPOS machines, on the other hand, are not. It is not clear to ASIC what demand there is for generic fee information through ATMs. Whether the benefit of delivering such information through ATMs at this time would outweigh the costs is one for institutions to examine for themselves.

Good generic fee disclosure practices on internet banking sites

Internet banking sites should include a clear and prominent link to information about fees and charges for each product offered through the site.

The information should include all of the information listed in paragraph 7 of this Guide.

The link should be to information about the fees for that particular product. If appropriate, there could be a further link to comparative information about the fee structures for a range of competing products offered by the institution.

Good generic fee disclosure practices for telephone banking

Telephone banking services should include an option that enables consumers to access information about fees that apply to those transaction accounts accessible through telephone banking. The institution can determine whether the information is provided in an automated fashion, by putting the consumer through to an operator or by sending the consumer information.¹²

Good generic fee disclosure practices for ATMs

Where an institution chooses to provide generic fee information through its ATMs, that information should, at a minimum, include information about the cost of ATM transactions and the key variables impacting upon those costs such as any rebates or free transaction limits.

¹² The wording of this principle, takes account of the different levels of automation of telephone banking services presently in existence and the concerns of institutions about not unnecessarily expanding "talk time".

Real time disclosure immediately prior to any transaction

23. Good Disclosure Principle

Ideally, consumers should have optional access to information relevant to the cost of a specific transaction immediately prior to deciding whether or not to undertake the transaction.

24. Why is information at the time of the transaction desirable?

Information about the cost of a transaction at the time of the transaction is desirable as it may influence the transaction a consumer undertakes. Such information needs to be provided in time to allow the customer to cancel or change the transaction at no cost. An example of where the information may be particularly useful is where the consumer has used up all of their free transactions or rebate entitlements for the period and so may choose to withdraw more cash.

Real time transaction specific fee information is also likely to have an educative effect which could help consumers reduce the cost of their banking.

Finally, real time disclosure could play a role in promoting competition between institutions in terms of the fees they impose.

25. What are the legislative and self-regulatory requirements?

There are no regulatory or self-regulatory requirements for real time transaction specific fee information at the time of the transaction.

Under section 1017F of the Corporations Act 2001, institutions will generally¹³ be required to:

- (a) confirm any transaction as soon as is reasonably practicable after the transaction occurs, or
- (b) establish and maintain a facility so that the retail clients can confirm for themselves any transaction as soon as is reasonably practicable after the transaction occurs (see section 1017F(1) and (2))

Generally, the confirmation must give information that the institution reasonably believes the client needs (having regard to the information that the holder has received before the transaction) to understand the nature of the transaction, including any amount paid or payable by the client in relation to the transaction (See section 1017F(7) and (8) and regulations made for the purposes of 1017F(8)). However, this information will not have to be provided before the transaction is made. Also, the information about the cost of a transaction will not have to be provided if the amount payable by the client is not known at the time the

¹³ The Corporations Regulations contain a number of exceptions to the confirmation of transaction requirement in section 1017F. Basic deposit products that are "passbook accounts" are not subject to the confirmation of transaction requirements contained in section 1017F (see regulation 10.2.209). Also, a number of transactions, including transactions relating specifically to basis deposit products, are not required to be confirmed (see subregulation 7.9.62(3)).

confirmation is made (Regulation 7.9.63). In these circumstances, information about the amount payable can be provided later (i.e. when it becomes known) by giving the client a secondary confirmation notice, via a facility of the type mentioned above or in the next periodic report (Part 15, Schedule 10A of the Regulations).

These new confirmation of transaction requirements apply from 11 March 2002.

26. Good practice for real time transaction fee disclosure

Ideally, institutions should be aiming for a situation whereby consumers are able to optionally access information about the cost of an actual transaction and/or, where relevant:

- information about the number of transactions they have conducted during the period or the number of free transactions they may still make during the period; or
- the amount of potential rebate for the period they have used or have left to use.

This information should be available prior to a transaction being completed so that the consumer has the opportunity to cancel or alter the transaction should they so chose.

Such optional information should be available on own-institution ATMs, internet and telephone banking services and, in the longer term, foreign ATMs.

Convenience concerns suggest that such an option is not suitable for EFTPOS transactions though, ideally, EFTPOS receipts would in the long term include, where relevant, information about the number of transactions conducted during the period or the amount of any rebate used up to date.

The principle deliberately talks about consumers being given the "option" of getting this information since providing it for every transaction would be costly and would lengthen the time taken for transactions. Importantly, this is information that most consumers are unlikely to want for every transaction but will want to be able to access from time to time (eg when they suspect they have used up their free limit for the period but aren't sure).

The information suggested for disclosure is done in this "and/or" format so that a move to real time disclosure doesn't necessarily result in consumers losing the benefit of some existing fee regimes whereby their most expensive transactions for the period are included within the free limit. Under these schemes the cost of an individual transaction can't be calculated until the end of the period. Real time disclosure here could involve telling a customer how many transactions they have conducted for the period. Institutions taking this approach may wish to consider whether they should also disclose the cost of that type of transaction should the customer be charged for it or whether such additional information would be confusing for customers. Knowing the number of transactions already conducted for the period won't necessarily tell the customer if they will eventually be charged for a particular transaction but it will let them know whether they are now paying fees for transactions because they have had more transactions than are included in the free limit.

27. Complex fee structures and good disclosure.

In a number of cases, ASIC has been told that an institution cannot introduce real time disclosure because of aspects of their fee structure. In ASIC's view, institutions dedicated to maintaining good disclosure practices who have fee structures which are inconsistent with real time disclosure of the actual cost of the transaction, should ask themselves - does the consumer benefit sufficiently from the present structure to justify it and/or could the structure be altered in some way so that real time disclosure could be achieved without the consumer losing any benefits?

An example of fee structures which appear to provide sufficient benefits for consumers to justify a deviation from real time actual cost disclosure, is those schemes which count the most expensive transactions for the period in the free limit. Under these schemes institutions can't work out the cost of a particular transaction until the end of the period when they know which transactions will be included in the free limit. In these cases real time disclosure could be modified to require disclosure of the number of transactions undertaken so far during the period or of the number of free transactions remaining.

On the other hand, problems associated with some rebate schemes appear capable of resolution. These schemes, provide a rebate on fees to consumers. The amount of the rebate is dependant upon details of the consumers' relationship with the institution during the period and is thus not known until the end of the period. There would seem to be no good reason why these rebate schemes couldn't calculate rebates on the basis of the previous month's relationship.

28. Implementing this principle

ASIC understands that the costs associated with implementing real time disclosure are very significant and could run to many millions of dollars per institution. We also recognise that different institutions will have different time tables for introducing the types of changes to computer and processing systems that will be necessary before such real time disclosure can become a reality. ASIC does not have the power to set a timetable for the introduction of real time disclosure. ASIC does, however, strongly urge institutions to:

- factor the desirability of real time disclosure into their systems redesigns and equipment upgrade and replacement programs now;
- introduce interim measures which can assist consumers to work out the likely cost of an actual transaction. Possible interim measures that have been suggested to ASIC by institutions include:
 - the provision of mini statements;
 - the provision of best available information about costs and / or how many transactions have been made for the period – subject to cheque clearances and based upon the limits of 24 hour batching and lack of relationship information;
 - providing a phone number people can call to find out transaction specific fee information and having it available in branches; and

- end of day disclosure (this would involve the calculation of fees at the end of the day with a fee balance being provided at the beginning of the next day. The information would always be 24 hours behind).
- Co-operate with the ASIC monitoring proposals outlined in paragraph 34 of this guide – these will include providing ASIC with a proposed timetable for the introduction of real time disclosure.

29. Good practice for real time foreign ATM fee disclosure

What are foreign ATM fees and why should they be disclosed?

A foreign ATM fee is a fee that a financial institution charges its own customer for having used another institution's ATM (including other Australian institutions' ATMs). It is important that consumers understand when they are likely to be charged a foreign ATM fee as these fees are usually at least twice as much as the fees for using their own institution's ATM.

What legislative and self-regulatory requirements?

As with other forms of real time disclosure, there are no legislative or self-regulatory requirements for disclosure of foreign ATM fees.

Good practice and disclosure of foreign ATM fees

Consumers should know, at the point of making the transaction, whether they could be charged a "foreign ATM fee" because the ATM is not in their network.

Institutions should determine for themselves whether they comply with this by attaching notices/stickers to the ATM or its surrounds or by onscreen disclosure.

In the longer term, it would be desirable to have onscreen disclosure of the actual amount of the foreign ATM fee.

30. Good practice for real time disclosure of surcharges.

What are surcharges and why should they be disclosed?

A surcharge is a fee charged by the owner of an ATM or EFTPOS machine (who may not be a financial institution) for the use of that machine. It is charged directly to the consumer. At present the fees that financial institutions charge their own account holders for the use of their machines are excluded from this definition of surcharges – these fees are simply categorised as transaction fees. Unlike foreign ATM fees, where the fee is uniform regardless of which other institution's machine you use, surcharges can vary from machine to machine and even from time to time and place to place. Consumers need surcharges to be disclosed so that they can tell which machines are the cheapest ones to use.

What are the legislative and self-regulatory requirements?

As with other forms of real time disclosure, there is no legislative requirement for disclosure of surcharges.

Clause 4.6 of the revised EFT Code (which, unlike the rest of the Code, doesn't become fully effective until 1 April 2003) provides:

An account institutions shall include in its agreements with any person who makes electronic equipment available to a user so that the user may perform an EFT transaction, a requirement that the person disclose to the user (at a time which enables the user to cancel the EFT transaction without cost to the user) the amount of any fee (such as a surcharge) charged by the person for the use of its electronic equipment which will be directly passed on to the user or account holder.

The approach set out in the revised EFT Code recognises that not all ATM owners will be account institutions and therefore some may not subscribe to the Code. As the Code can only bind subscribers it has therefore taken the approach of requiring subscribers to make disclosure of surcharges a condition of their agreements with EFT machine owners. Should a more effective means for requiring such disclosures be implemented elsewhere the Code can be changed.

Good ATM surcharge disclosure practices

Where an ATM operator charges a consumer a direct fee for the use of one of their ATMs, for a transaction on an account which is not held with the ATM operator, that fact and the amount of the fee should be disclosed to the consumer in sufficient time for the consumer to determine whether they wish to go ahead with the transaction or cancel or alter it in some way.

Good EFTPOS surcharge disclosure practices

Where an EFTPOS operator, including a merchant, charges consumers a surcharge for the transaction there should be clear and prominent signage alerting consumers to this fact and the amount of the fee.

31. Good Practice and the disclosure of overdraft fees prior to making the transaction.

Why is pre-transaction disclosure of overdraft fees desirable?

Consumers need to be aware that a transaction may attract an overdraft fee so that they can make an informed decision about whether or not they wish to proceed with the transaction. This is particularly important given the significant size of some of these fees.

What are the legislative and self-regulatory requirements?

There are presently no legislative or self-regulatory requirements for disclosure of overdraft fees immediately prior to making the transaction.¹⁴

Good overdraft fee disclosure

Where a consumer undertakes an electronic transaction that will result in them being charged on overdraft fee, they should be notified of this fact and the amount of the fee in sufficient time to allow them to cancel the transaction.

For technical reasons it may not be possible to apply this principle to EFTPOS transactions or foreign Bank ATM transactions, at least for the time being. It is also recognised that such disclosure would need to be based upon existing information and could not take account of unprocessed cheques.¹⁵

Guide administration

32. Promoting the Guide

ASIC will publish the Guide on its website: www.asic.gov.au and will undertake other methods to ensure that relevant institutions and consumers are aware of it.

33. Future research

Research on consumers' understanding of fee regimes

Subject to resource constraints, ASIC will follow-up its 2000 research on consumers' understanding of fees charged by banks, building societies and credit unions in respect of transactions on payments and deposit accounts by commissioning research on:

- the extent to which consumers understand the fees regimes applying to their accounts;
- their views on the adequacy of existing disclosure practices;
- changes, if any, they would like to see in disclosure practices.

This research will take place after the first monitoring exercise or two years after the Guide is published – whichever is the later. Amongst other things, it will consider changes, if any, in levels of understanding from the first survey.

¹⁴ Note that UCCC and Banking Code requirements may mean that there needs to be pre-contractual disclosure of potential overdraft fees. ASIC is also of the view that 1013D of the Corporations Act 2001 requires information about potential overdraft fees to be disclosed in the Product Disclosure Statement prior to the acquisition of a deposit product.

¹⁵ Many institutions choose not to have arrangements for overdrawing accounts.

Research on overseas implementation of real time transaction fee disclosure and technology issues associated with this issue.

ASIC will maintain a watching brief on the extent to which real time transaction fee disclosure (as opposed to surcharge disclosure) is occurring overseas. We will also continue to monitor technology developments which could help or hinder in making real time transaction fee disclosure common practice.

34. Monitoring adoption of the Guide and reporting

ASIC will monitor and publicly report on the extent to which the Guide has been adopted or is planned to be adopted. The initial monitoring shall occur, at the latest, 18 months from the date the Guide is published. ASIC's monitoring will have a particular focus on:

- the extent to which improvements to statement disclosure of fees has been implemented;
- the extent to which real time transaction fee disclosure has been implemented;
- the extent of planning and timetabling for real time transaction fee disclosure and other disclosure reforms;
- the extent to which institutions have given a public commitment to their timetable for improvements; and
- the interim measures institutions have introduced to assist consumers to determine when fees will apply to a transaction and, where possible, the fee that will apply.

ASIC will report publicly on the outcome of its monitoring and may make recommendations to the Government if there are insufficient signs of improvement.

35. Review of the Guide

ASIC will review the Guide, at the latest, 3 years after it is published.

Outside of reviews, the Guide may also be amended on an as needs basis to reflect changes in legislative and self-regulatory requirements and evidence of the effectiveness of various disclosure approaches.

Regulatory and financial impact

The principles in this Guide have sought to achieve an appropriate balance between facilitating informed decision-making by consumers and the legitimate business concerns of financial institutions.

Appendix A: Membership of the Transaction Fee Disclosure Working Group

Industry associations

- The Australian Bankers' Association
- Credit Union Services Corporation (Australia) Ltd
- The Australian Association of Permanent Building Societies
- National Credit Union Association
- Australian Finance Conference/Queensland Association of Permanent Building Societies (one person representing both)

Consumer organisations

- The Australian Consumers' Association
- Financial Services Consumer Policy Centre

Financial institutions

- ANZ Bank
- National Australia Bank
- Commonwealth Bank of Australia
- Westpac Banking Corporation
- St George Bank
- AMP Bank

Government organisations

- ASIC (Chair)
- Treasury

Other

- The Australian Banking Industry Ombudsman
- Cannex

Parties not on the working group but kept informed of its work

- The Reserve Bank of Australia
- Coles Myer
- The Australian Payments Clearing Association (from 2nd half of project)
- The Reviewers of the Banking and Credit Union Codes of Conduct