ASIC

Australian Securities & Investments Commission

REPORT 256

Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions

October 2011

About this report

This report examines the sales practices of authorised deposit-taking institutions (ADIs) that sell consumer credit insurance (CCI). We reviewed information obtained from 15 ADIs, and this report sets out our findings and recommendations.

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Contents

A Executive summary

1 Consumer credit insurance (CCI) is designed to protect consumers if something happens to them that affects their ability to meet their credit repayments. Typically, CCI covers consumers in the event of:

- death;
- permanent disablement; or
- loss of income due to injury, illness or involuntary unemployment.

What we did

2 We obtained information from 15 authorised deposit-taking institutions (ADIs) that distribute CCI in conjunction with home loans, personal loans and credit cards.

3 The results described in this report relate to the 15 ADIs reviewed. As there is no publicly available information about the market share of CCI distributors, our selection of these ADIs was based on:

- our desire to examine a cross-section of different ADIs, including Australian-owned ADIs, foreign subsidiary ADIs and regionally based ADIs;
- known or perceived market share; and
- existing information available to us (such as complaints and breach notification reports lodged under s912D of the *Corporations Act 2001* (Corporations Act)).

4 Our review focused on CCI policies sold by the 15 ADIs from 1 January 2009 to 31 December 2009[1] and examined:

- sales and distribution practices;
- sales and claim volumes;
- training and monitoring systems; and
- complaints and breaches.

5 Full details of the methodology used are set out in the appendix.

[1] Our review period covered the period from 1 January 2009 to 12 February 2010 (full review period). However, for consistency and future comparison purposes, we decided to limit our review and reporting of data to the period from 1 January 2009 to 31 December 2009. We have noted any instances where data relates to the full review period.

Why we did it

6 As a general rule, CCI is usually sold to consumers either:

- when the consumer applies for credit; or
- after the consumer has taken out a credit product, including during outbound telemarketing calls or when the consumer contacts the CCI distributor for another purpose (e.g. to activate a credit card).

7 CCI is not often actively sought out by consumers.

8 Problems with the process of selling CCI have been identified by regulators and consumer representative groups over a number of years.[2] More recent complaints[3] made to and investigated by ASIC indicated that there were persistent issues with the sale and distribution of some CCI products in relation to the distributors investigated. These issues included:

- consumers being sold CCI products without their knowledge or consent;
- pressure tactics and harassment being used to induce consumers to purchase CCI products;
- misleading representations being made during the sale of CCI products; and
- serious deficiencies in the scripts used for the sale of CCI products.[4]

9 In addition:

- a large proportion of CCI claims are denied—for example, in 2010, 13% of claims on CCI products were denied compared with 2% of all personal general insurance claims;[5] and
- the net loss ratio[6] for CCI is relatively low: 34% in 2010.[7]

[2] G Renouf and Redfern Legal Centre, *Thirty one cents in the dollar: A report on consumer credit insurance from the consumer's perspective,* Australian Financial Counselling and Credit Reform Association, 1991; Following a Ministerial direction, the Australian Trade Practices Commission reviewed the CCI market in 1991 and published the report, *The market for consumer credit insurance: A study of competition, efficiency and the welfare of consumers*. A Government working group was then formed to develop mechanisms to implement the recommendations made and in the following years the *Insurance Contracts Act 1984* (Insurance Contracts Act) was amended, among other things, to require disclosure notices and provide a cooling-off period. Following another ministerial direction, the Australian Competition and Consumer Commission conducted a review of relevant regulatory reforms and industry practices, the results of which were published in *Consumer credit insurance review: Final report,* 1998. A cap on commissions was also imposed in response to the unnecessary or forced 'packing' of loan products with CCI premiums, where high commissions were being offered to encourage credit providers and their representatives to sell their CCI product: see paragraph 8.255 of the revised Explanatory Memorandum to the National Consumer Credit Protection Bill 2009 (Explanatory Memorandum).

[3] Including information brought to our attention by consumer representatives and caseworker groups.

[4] See ASIC Advisory (09-238AD) *Citigroup responds to ASIC concerns about telephone sales* (1 December 2009) and ASIC Advisory (09-184AD) *ASIC responds to concerns regarding ADMS direct marketing calls* (29 September 2009).

[5] Financial Ombudsman Service, *General Insurance Code of Practice: Overview of the year 2009/2010*, 2010, p. 39. Personal general insurance includes insurance for motor vehicles, homes, travel, consumer credit, sickness and/or accidents, valuables, pleasure crafts, and caravan, mobile homes and/or trailers as well as other classes of personal insurance.

[6] Net loss ratio is the ratio of the benefits provided to consumers to the premiums earned.

[7] Calculated using data reported by APRA, *Statistics: Half yearly general insurance bulletin: June 2010*, 8 December 2010.

10 It is in this context that ASIC decided to examine the sale and distribution of CCI products in Australia more closely.

What we found

Sales volumes, denied claims and cancellations

11 The data we obtained from the 15 ADIs we reviewed showed that—in this segment of the market, at least—661,902 CCI policies were sold. Of these policies, 52.7% were sold with credit cards, 36.1% were sold with personal loans and 11.2% were sold with home loans.

12 The overall conversion rate for CCI policies sold by the 15 ADIs was 19.4%[8] (i.e. 19.4% of consumers who purchased home loans, personal loans or credit cards from these ADIs also purchased CCI). Within this, sales of CCI had the highest conversion rate when sold with personal loans, with seven ADIs having conversion rates greater than 50%.

13 In addition:

- the overall rate of denied claims was 15.9%,[9] with one ADI having a denial rate of 46.9% (for CCI sold with credit cards) and seven of the 15 ADIs reviewed having denial rates of 30% or more for CCI sold with one or more of the products they distribute,[10] and
- 13.8% of CCI policies were cancelled during the review period for reasons other than the closure of the loan.[11]

14 For more information about our key findings in relation to the CCI market, see Section B.

Sales practices

15 In our review of the scripts used by the ADIs to structure the sales practices followed by their staff, we identified a number of areas of concern.

16 Of the 15 ADIs we reviewed, three sold at least one CCI product over the telephone without using a script. We note that, where staff are not required to follow a script, there may be an increased risk that they will provide

[8] The total number of CCI policies sold divided by the total number of credit products sold (including credit products that were sold prior to the review period, but that CCI was still marketed to).
[9] The total number of CCI claims denied divided by the total number of CCI claims made. This figure does not include claims that were withdrawn by the consumer before they were formally denied by the ADI.
[10] Four denial rates of 30% or more related to CCI sold with credit cards, three related to CCI sold with personal loans and one related to CCI sold with home loans.
[11] The total number of CCI policies cancelled divided by the total number of active CCI policies (these figures are for the full review period). The calculation is based on data from 13 ADIs.

information or advice that is unauthorised, incomplete, inaccurate or misleading.

17 Some of the scripts that were used lacked sufficient structure to prevent staff from improvising and providing additional information not covered in the scripts.

18 Table 1 summarises some of the other key issues we identified with the scripts and other tools that were used by the ADIs.

Table 1: Issues identified with sales practices in scripts and other tools used by ADIs

Issue	Conduct
Consumers may not be aware that they are purchasing CCI or that CCI is optional	Seven ADIs had scripts that did not specifically point out that the purchase of CCI was optional. Eight ADIs had scripts that did not include a clear statement of their intention to sell insurance and/or a question asking consumers for their permission to discuss insurance. Three ADIs that sold CCI during credit card activation calls or outbound telemarketing campaigns had scripts that did not clearly delineate between the original purpose of the call and the sale of CCI. Four ADIs had scripts that used potentially ambiguous words (such as 'activate', 'enrol' and 'process') to confirm that a consumer was buying CCI.
Consumers may not have consented to the purchase of CCI	Nine ADIs had scripts that did not include a clear question about whether consumers consented to the purchase of CCI.
Consumers may not be aware that they may be ineligible to claim on all components of the CCI they have purchased	Ten ADIs had scripts that did not point out the main applicable exclusions (other than by referring consumers to the Product Disclosure Statement (PDS)). Five ADIs did have separate application forms for CCI that included some conditions of eligibility in the declaration section. However, these conditions were not always clearly described as exclusions.
Use of pressure or harassment by sales staff	Only four ADIs had formal guidelines in place instructing staff to end a telephone sale if the consumer indicated that they did not want to purchase the product.
Consumers may not understand how much they pay for CCI	Five ADIs had scripts that did not include information about the cost of CCI. None of the 12 ADIs that charged the cost of CCI up-front, and capitalised it into the cost of the underlying loan, disclosed that interest was payable in these circumstances. At least in the first instance, nine ADIs automatically included the cost of the CCI product in the quote for the loan repayments payable on the personal and/or home loan the consumer was applying for. For CCI sold with personal and home loans, ADIs usually calculated the premium using the overall limit of the facility rather than the credit actually used by the consumer. Only one ADI had a script that included an explanation of how the premium was calculated.

Issue	Conduct
Consumers may not understand how long the CCI they have purchased lasts for	Six ADIs offered CCI policies that had three-year or five-year terms, although the home loans they were sold in conjunction with could be for 25 years or more. Only one of these ADIs had a script that included information about the duration of the CCI policy. Four ADIs offered CCI policies that had a continuation of cover feature, where the policy extended beyond the life of the credit product it was sold in conjunction with. None of these ADIs had scripts that included information about the duration of the CCI policy.

Source: ASIC review, 2009

19 For more information about sales practices, see Section C.

Disclosure

20 We found that some ADIs that distributed one or more CCI products over the telephone did not provide Product Disclosure Statements (PDSs) to consumers *before* they acquired the CCI, which may in some circumstances raise questions about reliance on s1012G.

21 We also found that few ADIs provided consumers with ongoing reminders about the cost of CCI and how to claim on it.

22 For more information about issues relating to disclosure, see Section D.

Training and monitoring

23 The ADIs all had systems in place for training and monitoring staff.

24 However, we identified that the training delivered by some ADIs:

- was limited to the induction of new staff and was not provided on an ongoing basis; and/or
- focused on generating sales rather than on minimising the risks of non-compliant sales.

25 We also found that the monitoring systems of some ADIs:

- did not focus specifically on CCI, relating instead more broadly to general banking or insurance services;
- did not focus on the conduct of staff while they were selling CCI, focusing instead on whether staff had completed required training and/or distributed required documents; and/or
- were not structured to detect issues before they materialised into consumer complaints, breaches or policy cancellations.

26 For more information about ADIs' training and monitoring systems, see Section E.

Complaints and breaches

27 All ADIs reported that they had systems in place to record complaints and breaches. However, the number of breaches that some ADIs recorded[12] was relatively low in comparison to the number of complaints these ADIs received. For example, one ADI reported that, during the review period, 687 complaints were received but no breaches were recorded.

28 From the information provided, we identified that:

- 50% of complaints were sales related;[13]
- at least six ADIs had received complaints from consumers who did not believe they had authorised the purchase of insurance;[14] and
- at least eight ADIs received complaints from consumers whose requests to cancel CCI policies had not been actioned.

29 For more information about complaints and breaches recorded by ADIs, see Section E.

Regulatory framework

30 Relevant to CCI, ASIC regulates the licensing, conduct and disclosure obligations of insurers and ADIs under the *Insurance Contracts Act 1984* (Insurance Contracts Act), the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the National Credit Code[15] and the Corporations Act. Industry codes of conduct also include relevant standards that subscribers must observe.

31 For more information about the relevant regulatory framework, see Section F.

Recommendations

32 In order to address the concerns identified in this report, we make the recommendations set out in Table 2 and Sections C, D and E. Having considered procedures and practices across the industry, as well as outcomes for consumers, we think these recommendations reflect best practice and will help ensure confident and informed consumers.

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[12] This includes both breaches that are reportable to ASIC and less significant breaches recorded by the ADIs.
[13] This figure is based on 14 ADIs. One ADI could not provide us with the requested breakdown of complaints.
[14] This figure is based on 13 ADIs. Two ADIs could not provide us with details of the complaints they had received.
[15] Sch 1 of the *National Consumer Credit Protection Act 2009* (National Credit Act).

Table 2: Recommendations for the sale of CCI

Recommendation 1: Formal sales scripts	When CCI is sold over the telephone, distributors should have formal scripts in place for their sales staff. Scripts should include: (a) sufficient structure to minimise the risk of staff being required to 'ad lib' or continually refer back to the PDS to provide information to the consumer; (b) a clear statement, made before any attempt to sell CCI, of the intention to sell insurance (this may take the form of a clear 'permission to discuss insurance' question, where the consumer's consent is obtained before attempting to sell CCI to the consumer); (c) when CCI is cross-sold during calls made by a consumer for some other purpose (e.g. to activate their credit card), a clear delineation between the original purpose of the call and the attempted sale of the CCI product; (d) a clear statement that the purchase of CCI is optional; (e) the use of words such as 'purchase' and 'buy' to describe the purchase of CCI, rather than potentially misleading words such as 'activate', 'enrol' and 'process'; (f) a clear question asking the consumer if they consent to the purchase of CCI (asked after the consumer has been provided with all relevant information about the product); (g) a clear explanation of the main exclusions that apply to the CCI policy (and where CCI is sold as a packaged product, this should include a clear explanation of the main exclusions that apply to each component of the policy); (h) clear instructions for staff to end any attempted telephone sale if a consumer indicates once, or at the most twice, that they do not want to purchase the product; (i) information about the cooling-off period, without using the cooling-off period as a selling point (this may be best achieved by providing information about the cooling-off period after the consumer has clearly agreed to buy the product); and (j) information about the full cost of the CCI policy (see also Recommendations 3–5). When sales are made in branches, we encourage distributors to adopt an approach based on this recommendation (e.g. by requiring staff to use a checklist covering the elements included in this recommendation). We also note that, where only general advice is provided, consumers must be issued with a general advice warning that complies with s949A of the Corporations Act.
Recommendation 2: Evidence of consent	Distributors should obtain adequate evidence that a consumer has consented to purchase CCI. Examples of such evidence include: (a) for branch sales, obtaining the signature of the customer consenting to the purchase of CCI; and (b) for telephone sales, recording the relevant call (during which the consumer has been clearly asked whether they consent to the purchase of CCI).

Recommendation 3: Disclosure of interest payments	If a CCI premium is fully funded by the underlying loan, consumers should be informed verbally, and in the loan contract, that they will pay interest on their CCI premium. We consider it best practice for consumers also to be informed, where possible, of the amount of the interest they will be paying on their premium for the life of the CCI policy (or loan).
Recommendation 4: Separate quotes	When CCI is sold with a credit product, staff should quote repayments for the underlying loan separately to the CCI premium. We consider it best practice to: (a) initially quote loan repayments without the CCI premium included in the loan repayment; and (b) only raise CCI with the consumer after they have already been quoted the amount of their loan repayments (without the CCI policy).
Recommendation 5: Disclosure of premium structure	Consumers should be informed how their premiums will be structured, such as: (a) whether premiums are to be funded by the underlying loan or paid separately by the consumer; (b) how premiums are calculated (e.g. whether premiums are based on the credit actually used by the consumer or the overall limit of the underlying loan); and (c) whether premiums are payable up-front, or in monthly or annual instalments.
Recommendation 6: Duration of CCI policies	Where the duration of a CCI policy is not linked to the duration of the underlying credit product it is sold with, consumers should be informed (including as set out in formal scripts) about the duration of the policy (and when it will expire in relation to the duration of the underlying credit product).
Recommendation 7: Timing of provision of PDSs	Distributors should ensure they provide PDSs to consumers at the appropriate time (in most circumstances, before the consumer acquires the CCI policy).
Recommendation 8: Ongoing information	Consumers should be provided with ongoing information about their CCI policy, including a contact number to call if they have any queries or need to make a claim. We consider it best practice to include this information in a prominent position in relevant communications with consumers.
Recommendation 9: Training programs	Distributors should review their training programs to ensure that they are provided to staff on an ongoing basis, and that they adequately address each of the issues raised in this report.
Recommendation 10: Monitoring systems	Distributors should have documented monitoring systems in place that comprise a range of systems to detect non-compliant sales of CCI. These systems may include, for example: (a) regular reviews of sales, complaints and cancellations reports (including appropriate follow-up with sales staff and/or consumers where issues are identified); (b) mystery shopping exercises; and (c) sales verification calls. We consider it best practice for distributors that sell CCI over the telephone to record calls and have processes in place to monitor recorded calls.

Application of recommendations to non-ADIs

33 While this review has focused on ADIs, we consider that, where relevant, our recommendations are likely to apply equally to non-ADI distributors of CCI.

Further work

34 We have addressed the issues of concern that we identified with the individual ADIs we reviewed.

35 We will also follow up on this current review by:

- updating the information we provide to consumers about CCI; and
- reviewing the conduct of ADIs to assess the implementation of our recommendations.

36 In light of the high number of denied claims and cancelled CCI policies that we identified, and the discrepancies between the high number of complaints and the low number of breaches recorded, we intend to conduct a second stage of this review to investigate in more detail:

- the claims and complaints handling procedures used by ADIs and the insurers that issue CCI;
- the subject matter of complaints and the reasons for claims being denied and/or withdrawn and CCI policies being cancelled; and
- net loss ratios for CCI.

37 We may also conduct a further review, in the future, of non-ADI distributors of CCI.

B The consumer credit insurance market

Key points

CCI is designed to protect a consumer's ability to meet their credit product repayments in the event of their death, permanent disablement, or loss of income through injury, illness or involuntary unemployment.

There is little publicly available information about the CCI market in Australia.

In relation to the 15 ADIs we reviewed over 2009:

- 19.4% of consumers who took out home loans, personal loans or credit cards with ADIs also purchased CCI. Most CCI was sold in conjunction with personal loans (45.5% of consumers who took out personal loans also purchased CCI);
- 15.9% of claims made on CCI polices were denied; and
- 13.8% of CCI policies were cancelled.

About CCI

38 CCI is defined in the National Credit Code as a policy that insures a debtor's capacity to make repayments under a credit contract, including insurance against the sickness, injury, disability, death or unemployment of the debtor.[16]

39 Depending on how CCI products are structured, they can either consist purely of life insurance components or be structured as 'hybrid' products containing both life and general insurance components.

40 The life insurance component of CCI commonly provides a lump sum payment of the outstanding loan balance upon the death of the insured. It also sometimes provides cover on the permanent disablement of the insured.

41 General insurance components of CCI policies commonly include:

- accident and sickness cover, which provides loan repayment benefits (commonly limited to the minimum loan repayments) upon injury to, or disability of, the insured as a result of accident or sickness (with the benefits paid usually limited to the duration of the injury or disability, or a specified period); and
- involuntary unemployment insurance, which provides loan repayment benefits (commonly limited to the minimum loan repayments) while the insured is involuntarily unemployed (with the benefits paid usually limited to a specified period of 90 days or more).

[16] The Insurance Contracts Regulations 1985 (Insurance Contracts Regulations) contain a similar but not identical definition of CCI in reg 21.

42 Some CCI policies contain other components such as:

- accidental death cover, which generally provides a lump sum payment of the outstanding loan balance plus an additional lump sum payment to the insured's estate as a result of the insured's death following an accidental injury;
- trauma cover, which provides a lump sum payment upon the insured being found to have a stated condition or disease;[17]
- merchandise protection cover, which provides benefits upon the loss or theft of, or damage to, merchandise purchased with the underlying loan product for a specified period after purchase; and
- stolen credit card cover, which provides a lump sum benefit in the event of the underlying credit card being stolen.

43 Regulation 23 of the Insurance Contracts Regulations 1985 (Insurance Contracts Regulations) sets out a number of prescribed exclusions for CCI policies, such as deliberate self-inflicted injuries and voluntary unemployment.

44 CCI policies often have further exclusions, such as:

- age (being younger than 18 or older than 65);
- pre-existing illnesses or disabilities;
- types of employment (e.g. seasonal or casual employment); and
- complications arising from pregnancy or childbirth.

About the CCI market

45 Publicly available information about the CCI market is limited. There has not been any recent analysis conducted on the size of the CCI market in Australia (such as the amount of premiums paid per annum and the number of CCI policies in force) or the market share of the issuers of CCI policies.

46 Currently, the Australian Prudential Regulation Authority (APRA) publishes some data on the CCI industry that is provided to it as part of insurers' overall reporting obligations. However, this data is limited to aggregate industry data sourced from regulatory returns submitted to APRA under the *Financial Sector (Collection of Data) Act 2001*.

47 It is possible to use the data published by APRA to calculate net loss ratios (the relationship of benefits provided to consumers to premiums earned) for CCI,[18] as shown in Table 3.

[17] 'Stated condition or disease' means a condition or disease that is included in the policy documents as being a condition or disease for which an insured would be eligible to receive trauma cover.
[18] Net incurred claims divided by net premium revenue.

Table 3: CCI premiums and claims

Year*	Net premium revenue ($m)	Net incurred claims ($m)	Net loss ratio
2010	275	94	**34%**
2009	253	56	**22%**
2008	217	39	**18%**

* Data shown is for the financial years ended in the 12 months to June of each year.
Source: APRA

48 In addition, according to the General Insurance Code of Practice overview for the 2009–2010 financial year:

- 923,294 CCI policies (including new business and renewals) were sold; and
- 13% of claims made were denied.[19]

About the CCI reviewed for this report

49 The focus of this review was on CCI products distributed by ADIs because most of the complaints that ASIC has received relate to this distribution channel.

50 Other distribution channels include non-ADI credit card issuers and businesses that sell CCI on behalf of insurers (e.g. retailers, car dealers and direct marketing organisations). There is no publicly available information about the market share of each distribution channel.

51 In this review, we looked at data provided by 15 ADIs that distributed CCI in conjunction with home loans, personal loans and credit cards in the period from 1 January 2009 to 31 December 2009. Where data was not available or was not presented in a consistent way, we eliminated it from our observations. For full details of the methodology used, see the appendix.

52 This section summarises data we obtained about the number of products sold, claims made and cancellations processed in relation to 15 ADIs that we reviewed.

Sales volumes

53 In total, the 15 ADIs sold 661,902 CCI policies. Of these policies, 52.7% were sold with credit cards, 36.1% were sold with personal loans and 11.2% were sold with home loans.

[19] Financial Ombudsman Service, *General Insurance Code of Practice: Overview of the year 2009/2010*, 2010, pp. 32, 34 and 39.

54 The conversion rate for CCI across the products and ADIs reviewed was 19.4%[20] (i.e. 19.4% of consumers who purchased home loans, personal loans or credit cards from the ADIs reviewed also purchased CCI).

55 Conversion rates were highest for personal loans, with the average conversion rate being 45.5% and seven ADIs having conversion rates of more than 50%.

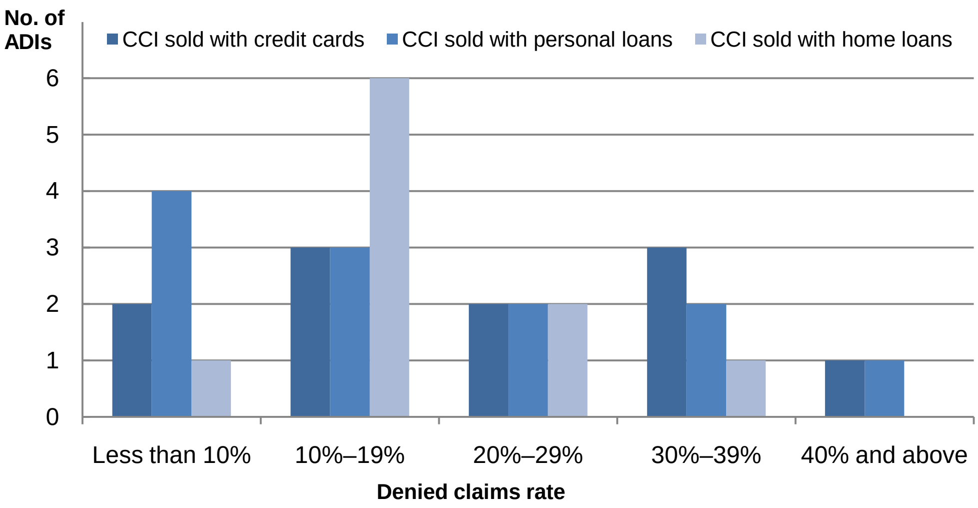
56 For CCI sold with credit cards, the average conversion rate was 17.4% and the highest conversion rate for one ADI was 32.0%. For CCI sold with home loans, the average conversion rate was 8.4% and the highest conversion rate for one ADI was 22.1%.

Denied claims

57 Overall, the rate of claims denied was 15.9%,[21] but this varied significantly across the ADIs.

58 Figure 1 shows the breakdown of rates of denied claims in relation to each product sold by each of the ADIs reviewed.[22] We note that not all ADIs sold CCI in relation to each of the credit products they distribute.

Figure 1: Number of ADIs aggregated by range of denied claims rate and type of product



Source: ASIC review, 2009

[20] The total number of CCI policies sold divided by the total number of credit products sold (including credit products that were sold prior to the review period, but CCI was still marketed to).
[21] The total number of CCI claims denied divided by the total number of CCI claims made. This figure does not include claims that were withdrawn by the consumer before they were formally denied by the ADI.
[22] These results are for 14 ADIs. One ADI was not able to provide us with this information.

59 CCI sold with credit cards had a higher average denial rate of 21.2%, compared with CCI sold with personal loans (11.5%) or CCI sold with home loans (12.9%).[23]

60 We note that these figures do not include claims that were withdrawn by consumers before ADIs made decisions about whether or not to decline the claims.

Cancellations

61 We found that, during the review period, 13.8% of CCI policies were cancelled for reasons other than the closure of the loan.[24]

62 We also found that at least eight ADIs received complaints from customers whose requests to cancel CCI policies had not been actioned.

63 We were concerned by the high number of denied claims and policy cancellations that we identified based on the data provided in this review. Accordingly, we intend to undertake further work to investigate the underlying reasons behind these high numbers in the context of a more detailed review of the claims handling procedures used by the ADIs and the insurers that issue CCI: see paragraphs 141–146.

Commissions

64 We note that the ADIs reviewed all received a commission of close to, but not more than, 20% of the premium from the relevant insurer(s) for the distribution of CCI. The maximum commission payable is capped at 20% by the National Credit Code.[25]

[23] The total number of CCI claims denied (credit cards/home loans/personal loans) divided by the total number of CCI claims made (credit cards/home loans/personal loans).

[24] The total number of CCI policies cancelled divided by the total number of active CCI policies (these figures are for the full review period from 1 January 2009 to 12 February 2010). This calculation is based on data from 13 ADIs.

[25] Section 145 of the National Credit Code. The cap on commission was imposed in response to the unnecessary or forced 'packing' of loan products with CCI premiums, where high commissions were being offered to encourage credit providers and their representatives to sell their CCI product: see paragraph 8.255 of the revised Explanatory Memorandum to the National Consumer Credit Protection Bill 2009.

C Sales practices

Key points

We found deficiencies in the sales practices of the ADIs reviewed that may lead to CCI being mis-sold or consumers not adequately understanding the products they are purchasing. Issues we identified include:

- consumers not being made aware that they have purchased CCI or that CCI is optional;
- consumers not being asked whether or not they wish to purchase CCI;
- consumers not being eligible to claim on all components of the CCI policy they have purchased;
- the potential for consumers to be pressured or harassed by sales staff; and
- consumers not understanding the cost or the duration of the CCI policy.

Issues we identified

65 In surveillances we undertook in 2009,[26] we identified significant problems with how some CCI policies were sold to consumers, including:

- consumers being sold CCI products without their knowledge or consent;
- potentially misleading representations being made during the sale and promotion of CCI products;
- the use of pressure tactics and harassment to induce consumers to purchase CCI products; and
- deficiencies in the scripts used for the sale and promotion of CCI products.

66 To assess whether these problems were more widespread, we asked the ADIs in this review to provide us with a breakdown of the types of complaint they received. Across these ADIs, 50% of the total complaints recorded were related to sales. Examples of the types of complaint recorded are discussed in this section, and more information about complaints is also included in paragraphs 138–140.

67 We assessed the sales practices of the 15 ADIs by looking at the tools they used to provide guidance to staff and monitor how they sold CCI to consumers.

[26] See 09-238AD and 09-184AD.

Use of sales scripts

Telephone sales

68 Of the 15 ADIs we reviewed, three sold at least one CCI product over the telephone without requiring staff to use a script.

69 We note that, where staff are not required to follow a script, there may be an increased risk that they will provide information or advice that is unauthorised, incomplete, inaccurate or misleading.

70 We also found that some scripts used by ADIs lacked sufficient structure to prevent staff from improvising and providing additional information not covered in the scripts. For example:

- one script consisted only of 'sales tips' and did not cover any compliance or legal obligations;
- one script included only a brief list of items that should be discussed with consumers over the telephone, and then instructed staff to 'expand on each point using your own style'; and
- two scripts were split between multiple documents, making it difficult for staff to follow the scripts closely.

Branch sales

71 Eleven of the ADIs sold at least one CCI product in branches without using a script.

72 We note that it may not always be practical to follow a script in these situations. However, we consider it important that an equivalent tool is used to ensure that consumers are provided with accurate and adequate information.

Recommendation 1(a): Formal sales scripts

When CCI is sold over the telephone, distributors should have formal scripts in place for their sales staff. Scripts should include the information specified in Recommendations 1(b)–(j).

Sales scripts should include sufficient structure to minimise the risk of staff being required to 'ad lib' or continually refer back to the PDS to provide information to the consumer.

When sales are made in branches, we encourage distributors to adopt an approach based on this recommendation (e.g. by requiring staff to use a checklist covering the elements included in this recommendation).

73 Most of the review findings contained in the remainder of this section relate to the content and structure of scripts where scripts were used, but we also refer to other tools, where relevant.

Consumer awareness of making a CCI purchase

74 As a general rule, CCI is not often sought out by consumers. Instead, it is usually offered to them either:

- when a consumer contacts an ADI (either by telephone or at a branch) to take out a credit product; or
- after the customer has taken out a credit product, in the following circumstances:
  - during outbound telemarketing calls made by ADIs to consumers (we note that the eight ADIs that telemarketed CCI to credit card holders had an average conversion rate of 20.6%, compared with an average of 6.2% for the four ADIs that did not telemarket CCI attached to credit cards);
  - when consumers telephone ADIs for another purpose (e.g. to check their loan balance or to request a credit card balance transfer); or
  - when consumers telephone ADIs to activate their credit card (we note that ASIC identified and addressed a number of concerns with this method of sale with individual ADIs before this review: see paragraphs 75 and 94).[27]

75 Our previous work suggests that, unless a consumer explicitly agrees to discuss and purchase CCI in circumstances where they have contacted the ADI to activate a credit card, they may not understand that they are not obliged to discuss or buy CCI, or that they have in fact purchased a CCI policy.[28]

76 In this review, we found that:

- seven ADIs had scripts that did not adequately or specifically point out that the purchase of CCI was optional;
- eight ADIs had scripts that did not include a clear statement of their intention to sell insurance and/or a question asking consumers for their permission to discuss insurance;
- three ADIs that sold CCI during credit card activation calls, or in outbound telemarketing campaigns, had scripts that did not clearly delineate between the original purpose of the call and the sale of CCI; and
- four ADIs had scripts that used potentially ambiguous words (such as ‘activate’, ‘enrol’ and ‘process’) to confirm that a consumer was purchasing CCI, increasing the risk that consumers may not have been aware that they were actually purchasing CCI rather than, for example, activating their credit card.

[27] This sales channel was used by two ADIs.
[28] 09-238AD.

Recommendation 1(b)–(e): Formal sales scripts

Sales scripts should include:

- 1(b)—a clear statement, made before any attempt to sell CCI, of the intention to sell insurance (this may take the form of a clear 'permission to discuss insurance' question, where the consumer's consent is obtained before attempting to sell CCI to the consumer);
- 1(c)—when CCI is cross-sold during calls made by a consumer for some other purpose (e.g. to activate their credit card), a clear delineation between the original purpose of the call and the attempted sale of the CCI product;
- 1(d)—a clear statement that the purchase of CCI is optional; and
- 1(e)—the use of words such as 'purchase' and 'buy' to describe the purchase of CCI, rather than potentially misleading words such as 'activate', 'enrol' and 'process'.

Consumer consent to purchase CCI

77 In this review, at least six ADIs reported receiving complaints from consumers who did not believe that they had given their consent to purchase CCI.[29]

78 Nine ADIs had scripts that did not include a clear question about whether the consumer had consented to the purchase of CCI.

Evidence of consent

79 A related issue is that some ADIs did not obtain and retain *evidence* that a consumer had consented to purchase CCI—for example:

- for branch sales, by requiring consumers to sign separate application forms (seven ADIs did not do this); and
- for telephone sales, by recording the telephone calls (three ADIs did not do this).

80 Without evidence of consent, it is difficult to substantiate complaints such as those described in paragraph 77.

81 In light of the other concerns with CCI sales practices raised in this report, we also consider the timing of a consumer's consent to be important—that is, consent should be obtained *after* the consumer has been provided with the information referred to in Recommendations 1(b)–(g) and Recommendation 1(j).

[29] This figure is based on 13 ADIs. Two ADIs could not provide us with details of the complaints they received.

Recommendation 1(f): Formal sales scripts

Sales scripts should include a clear question asking the consumer if they consent to the purchase of CCI (asked *after* the consumer has been provided with all the relevant information about the product).

Recommendation 2: Evidence of consent

Distributors should obtain adequate evidence that a consumer has consented to purchase CCI.

Examples of such evidence include:

- for branch sales, obtaining the signature of the customer consenting to the purchase of CCI; and
- for telephone sales, recording the relevant call (during which the consumer has been clearly asked whether they consent to the purchase of CCI).

Consumer eligibility for CCI claims

82 In our past work, we have seen numerous instances where consumers have been unable to claim on their CCI policy because they were ineligible to be covered by the policy or by components of the policy.[30]

83 This issue was confirmed in our current review, where we identified a number of complaints made by consumers to ADIs that they were not eligible to make a claim under the policy sold to them because, for example, they:

- were older than the eligible age;
- had a pre-existing medical condition; and/or
- were unemployed.

84 We found that 10 ADIs had scripts that did not point out the main applicable exclusions (other than by merely referring consumers to the PDS).

85 Five of the eight ADIs that had separate application forms for CCI did include some details about exclusions in these application forms, but this information was contained in the 'declaration' section consumers had to sign to purchase the policy.

[30] 09-238AD.

86 While we consider referring to exclusions in application forms to be a positive feature, we are concerned that including the information in the declaration section may not adequately highlight these exclusions to consumers because:

- the conditions are not always clearly presented as exclusions;
- important exclusions are sometimes omitted; and/or
- the information is often contained in small and lengthy fine print among several other items.

87 We note that the risk that consumers may buy a policy that they are ineligible to claim on may be higher when CCI is sold as a packaged product (i.e. all components of the policy are sold to consumers together as a package), rather than as an unpackaged product (i.e. consumers can select and pay for only the components of the policy that they elect to purchase).[31]

88 Table 4 provides a summary of the types of product distributed by the ADIs in this review.

Table 4: Breakdown of packaged and unpackaged products

Type of CCI	Packaged	Unpackaged	Total
Personal loans	3	11	**14**[32]
Home loans	2	9	**11**
Credit cards	11	1	**12**

Source: ASIC review, 2009

89 One ADI we reviewed minimised the risk that CCI would be sold to consumers who could not make a claim because of unemployment by not selling packaged CCI cover to consumers who receive pension entitlements or Centrelink benefits.

Recommendation 1(g): Formal sales scripts

Sales scripts should include a clear explanation of the main exclusions that apply to the CCI policy (and where CCI is sold as a packaged product, this should include a clear explanation of the main exclusions that apply to each component of the policy).

[31] Unpackaged products generally require the inclusion of a compulsory component of cover, such as life cover.
[32] One ADI sells three products: two are unpackaged and one is packaged. We have recorded one packaged and one unpackaged product for this ADI.

Pressure or harassment by sales staff

90 In our earlier work, one of the concerns we identified was that consumers felt that they were being pressured to purchase CCI despite saying 'no' during calls.[33] Similarly, in this review, we identified complaints made by consumers that they felt pressured or harassed when being offered CCI.

91 In this review, we found that 11 ADIs had tips for staff to use to overcome consumers' objections or resistance to a sale.

92 While it is not always the case that a consumer who raises an objection is, in fact, not interested in purchasing CCI, we consider it important that staff do not persist in selling a product to a consumer who has clearly indicated that they do not wish to purchase it.

93 We found that only four ADIs had formal guidelines in place instructing staff to end a telephone sale if a consumer indicated that they did not want to purchase the product or continue the telephone conversation. Of these ADIs, one instructed staff to end the call as soon as the consumer clearly indicated that they were not interested, and two others instructed staff to end the call if the consumer indicated on two separate occasions that they were not interested.

94 In our earlier work, we were also concerned by the following types of conduct identified:

- the practice of keeping consumers 'captive' by waiting to tell credit card holders that their credit cards have been activated only after CCI sales (or attempted sales) have been completed;[34] and
- using the cooling-off period as a selling point—that is, telling consumers during telephone calls that they would be sent policy documents so that they could review and make a decision whether to purchase CCI during the cooling-off period.[35]

95 We also note that some ADIs instructed staff to highlight the risks to consumers of not having insurance in circumstances where, for example, they become sick or unemployed, without also informing them of how loan variations on the grounds of financial hardship may be available in these circumstances.

[33] This concern was raised in the context of CCI being cross-sold when consumers contacted ADIs to activate credit cards: see 09-238AD.
[34] 09-238AD.
[35] 09-184AD.

Recommendation 1(h) and 1(i): Formal sales scripts

Sales scripts should include:

- 1(h)—clear instructions for staff to end any attempted telephone sale if a consumer indicates once, or at the most twice, that they do not want to purchase the product; and
- 1(i)—information about the cooling-off period, without using the cooling-off period as a selling point (this may be best achieved by providing information about the cooling-off period after the consumer has clearly agreed to buy the product).

Consumer understanding of cost of CCI

96 Another common type of complaint that we identified in this review was complaints made by consumers who believed they were misinformed or received inaccurate information about the cost of CCI, which influenced their decision to purchase the product. This included, for example, that:

- the CCI premium would be a one-off payment (when, in fact, it was charged monthly);
- if consumers paid their loan balance in full every month, they would not incur a premium charge;
- the CCI premium was for lender's mortgage insurance, or simply another cost attached to the loan; and
- the CCI cover was free during the cooling-off period.

97 In this review, we found that five ADIs had scripts that did not include any information about the cost of CCI.

Recommendation 1(j): Formal sales scripts

Sales scripts should include information about the full cost of the CCI policy: see also Recommendations 3–5.

98 We also identified the following specific problems with the information that was provided to consumers about costs.

Disclosure of interest

99 Where premiums were payable up-front and capitalised into the underlying loan (as was sometimes the case with CCI sold with certain home loans and personal loans):

- none of the 12 ADIs that charged the cost of CCI in this way disclosed in scripts:
  - the fact that interest was payable on the CCI premium in this situation; or

  - the total amount of interest that would be charged over the life of the loan; and
- eight ADIs did not offer consumers any options other than to capitalise the CCI payment into the loan amount for at least one of the products offered.

100 Although the National Credit Code does not require the separate disclosure of interest payable on the CCI premium,[36] the information we reviewed suggests that, where this information is not disclosed (in circumstances where the CCI is fully funded by the underlying loan), consumers may not realise how much they will pay for their CCI policy.

101 Capitalising the CCI premium into home loans also increases the loan-to-value ratio (LVR). We found that one ADI took positive action to highlight the risk to consumers that, if the LVR on a home loan exceeds a set limit, lender's mortgage insurance may be charged or the amount of lender's mortgage insurance charged may be increased. We consider disclosure of this risk to be best practice.

Recommendation 3: Disclosure of interest payments

If a CCI premium is fully funded by the underlying loan, consumers should be informed verbally, and in the loan contract, that they will pay interest on their CCI premium.

We consider it best practice for consumers also to be informed, where possible, of the amount of interest they will be paying on their premium for the life of the CCI policy (or loan).

Quotes for loan repayments

102 We found that nine ADIs, at least in the first instance, automatically included the cost of the CCI policy in the quote for the loan repayments payable on the home loan and/or personal loan that the consumer was applying for.

103 In the sales script used by one ADI, consumers were told that, 'the premium for this protection has been included in the repayment quote for your convenience'.

104 Another ADI's script instructed staff to:

> Remember, that as part of your recommended loan package to include all cover types in the total repayment—this is the first figure you give. If you

[36] Regulation 93 of the National Consumer Credit Protection Regulations 2010 requires a credit provider to give the debtor a list of key features of the contract, which includes (among other things) the premium payable and the fees and charges. However, interest is excluded from the definition of credit fees and charges: s204 of the National Credit Code.

> have gained their agreement that it is within their budget it is less likely that the [consumer] will object based on cost!

105 We consider that such conduct may be misleading or deceptive, in breach of s12DA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), because consumers may be misled into believing that:

- the loan repayments inclusive of CCI are the loan repayments exclusive of CCI;
- it is compulsory for them to purchase the CCI policy; and/or
- CCI is a free feature of the loan facility (when, in fact, it is sold in conjunction with the underlying credit product and has a separate cost).

Recommendation 4: Separate quotes

When CCI is sold with a credit product, staff should quote repayments for the underlying loan separately to the CCI premium.

We consider it best practice to:

- initially quote loan repayments without the CCI premium included in the loan repayment; and
- only raise CCI with the consumer after they have already been quoted the amount of their loan repayments (without the CCI policy).

Premium structure

Basis of payments

106 The basis on which the 15 ADIs calculated premiums varied between:

- the overall limit of the facility;
- the amount of credit used by the consumer; and
- the amount of cover elected by the consumer (that did not exceed the loan value).

107 Of the 12 ADIs that distributed CCI with credit cards, we found that 11 based monthly premiums on the amount of credit actually used by the consumer. Nine of these 11 ADIs included information about this in their scripts.

108 For CCI for personal loans and home loans it was more common for ADIs to calculate premiums using the overall limit of the facility, rather than the credit actually used by the consumer.

109 We are concerned that, in circumstances where the premium is not based on the amount of credit actually used by the consumer (as, for example, may be the case for CCI sold in relation to certain lines of credit), consumers may be

paying for a level of CCI cover that they do not receive (or may only potentially receive).

110 Only one ADI had a script that included an explanation of how the premium was calculated.

When premiums are paid

111 We found that when and how often premium payments were required to be made differed between ADIs and according to the CCI product being sold. For example, for CCI for credit cards, we found that nearly all ADIs required payment of premiums on a monthly basis. Information about the calculation of the premium on a monthly basis was provided in all but one of the relevant scripts.

112 For CCI sold with personal loans, we found that 10 ADIs sold products that required premiums to be paid up-front.

113 For CCI sold with home loans, we saw a larger range of payment methods. Seven ADIs gave consumers the option to either pay the premium up-front for a set time period (three or five years) or make payments on a monthly or annual basis; while four ADIs offered only one way in which premiums could be paid (either on a monthly or annual basis).

114 It appears that, if information is provided to consumers about when premiums are required to be paid, it is largely unscripted.

Recommendation 5: Disclosure of premium structure

Consumers should be informed about how their premiums will be structured, such as:

- whether premiums are to be funded by the underlying loan or paid separately by the consumer;
- how premiums are calculated (e.g. whether premiums are based on the credit actually used by the consumer or the overall limit of the underlying loan); and
- whether premiums are payable up-front, or in monthly or annual instalments.

Consumer understanding of duration of CCI policy

115 In our review, we looked at how long CCI policies last. We found that the duration of most CCI policies sold with credit cards and personal loans was linked to the duration of the underlying credit product. However, this was not always the case for home loans. For example, of the 11 ADIs that distributed CCI with home loans:

- six ADIs offered CCI policies that had three-year or five-year terms (with options to extend or pay monthly premiums at the end of the period), although the associated home loan could be for 25 years or more. Only one of these ADIs had a script that included information about the duration of the CCI policy; and
- four ADIs offered CCI policies that had a continuation of cover feature, where the policy extended beyond the life of the loan. These ADIs allowed consumers to elect the amount of CCI cover they would like and based their premiums on this figure.[37] The ADIs did not include information about the duration of the CCI policy in their scripts.

116 Where the duration of the CCI is not the same as the duration of the underlying credit product, we are concerned that some consumers may not understand that they may:

- be unable to claim on the CCI in the latter years of the underlying credit product (where the CCI policy does not extend for the duration of the loan); or
- continue to pay for cover despite no longer having a loan (where the CCI policy extends beyond the duration of the loan).

117 We also reviewed cancellation policies for the CCI products sold by ADIs. We found that, in most instances, CCI policies are automatically cancelled when a consumer pays out their loan or refinances (excluding the four ADIs that offered policies with a continuation feature).

Recommendation 6: Duration of CCI policies

Where the duration of a CCI policy is not linked to the duration of the underlying credit product it is sold with, consumers should be informed (including as set out in formal scripts) about the duration of the policy (and when it will expire in relation to the duration of the underlying credit product).

[37] One other ADI also allowed consumers to elect the amount of CCI cover they would like, although it did not have a continuation of cover feature.

D Disclosure

Key points

We found that, where CCI was sold over the telephone, some ADIs did not provide PDSs to consumers at the time of offering to sell the CCI policy.

We also found that ADIs often did not provide consumers with ongoing reminders about their CCI policy and how to claim on it.

Timing of provision of PDSs

118 The PDS is the document that sets out the significant features of a financial product, including its risks, benefits and cost.[38]

119 In general, under the Corporations Act, a retail client must receive a PDS before acquiring a financial product. As issuers of CCI products, relevant insurers are responsible for preparing the PDSs. ADIs that distribute CCI products are responsible for giving the PDSs to consumers.

120 We were satisfied that all the ADIs examined provided PDSs to consumers to whom they distributed CCI policies. However, we identified that some ADIs may not have provided PDSs to consumers at the appropriate time.

121 All the 14 ADIs that distributed CCI products via branches provided PDSs to consumers at the time of sale, and an opportunity to read and consider the PDS before committing to the purchase.

122 Of the 12 ADIs that sold CCI products during telephone sales, six only provided the PDS to consumers by mailing it to them after they had agreed to purchase CCI during the telephone call.

123 Section 1012G of the Corporations Act states that a PDS may be provided later if certain criteria are met, including that the consumer 'expressly instructs' that the product be issued to them immediately.[39] However, this provision is unlikely to apply—particularly in circumstances where the consumer has not contacted the ADI to request the CCI policy—because the agreement or consent of a consumer to purchase CCI is not the same as a consumer 'expressly instructing' the ADI to issue the CCI immediately.

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[38] See Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) for further information about ASIC's regulation of PDSs.

[39] These criteria are:

- an application form is not required and a cooling-off period is provided (s1012G(1)(a));
- the customer expressly instructs the ADI to issue the CCI policy immediately (s1012G(2)(a));
- it is not reasonably practicable to give the customer a PDS at the time of the issue or sale (s1012G(2)(b)); and
- the ADI complies with s1012G(3) and 1012G(3A) by reading out or otherwise providing certain information to the customer, and giving the customer the PDS no later than five days after the issue of the CCI policy (or at the time the confirmation requirement is complied with).

124 We note that the good disclosure principles set out in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168) require disclosure to be timely, with the broad objective of a PDS being to help consumers make informed choices about financial products.

125 We identified one ADI that met this objective in its telephone sales of CCI by mailing consumers a 'welcome package', including a PDS for CCI attached to credit cards, before contacting them by telephone.

126 Other ADIs met the objective by discussing CCI on the telephone but not completing the application process until the consumer had been provided with a copy of the PDS. This could be done either by asking the consumer to come into a branch to complete the application process, or by mailing a copy of the PDS to the consumer and either:

- following up with a telephone call; or
- inviting the consumer to contact the ADI if they wished to purchase CCI.

127 ADIs offering CCI should also consider whether the offer is covered by the prohibition on hawking contained in s992A and, if so, only make the offer in the circumstance outlined in s992A(3) (i.e. by providing a PDS before the consumer becomes bound by a legal obligation to acquire the CCI product).

Recommendation 7: Timing of provision of PDSs

Distributors should ensure they provide PDSs to consumers at the appropriate time (in most circumstances, *before* the consumer acquires the CCI policy).

Ongoing disclosure

128 We also reviewed whether ADIs provided disclosure of the fact that consumers had purchased CCI (e.g. in ongoing loan account or bank statements) and found that ADIs provided few, if any, ongoing reminders to consumers about the fact that they had CCI or how to claim on it.

129 Even where payment of CCI premiums were itemised in regular account statements (e.g. for CCI sold with credit cards), it was often unclear that the payments were for insurance, or what the insurance covered and how consumers could make claims.

Recommendation 8: Ongoing information

Consumers should be provided with ongoing information about their CCI policy, including a contact number to call if they have any queries or need to make a claim.

We consider it best practice to include this information in a prominent position in relevant communications with consumers.

E Training, monitoring, complaints and breaches

Key points

Although the ADIs in our review all had training and monitoring systems in place, some of these systems did not adequately address compliance issues.

The number of breaches recorded by some ADIs was relatively low in comparison to the large numbers of complaints these ADIs reported receiving.

Scope of section

130 Because the level of detail in the information provided to us by ADIs about both training and monitoring systems varied considerably, we have limited our analysis of these systems to general observations.[40]

131 In addition, our analysis of the complaints and breaches recorded by the ADIs identified concerns that were beyond the scope of this current review. Accordingly, we intend to undertake further work to investigate the claims and complaints handling procedures used by the ADIs and the insurers that issue CCI.

Training programs

132 The 15 ADIs all reported to us that they had formal training programs in place on the sale of CCI products. However, from the material we reviewed, it appears that:

- some ADIs limited their training to the induction of new staff, without also providing staff with ongoing training;
- the training programs provided by some ADIs concentrated on the features of the particular CCI products being sold and how to maximise sales (including overcoming objections by consumers), rather than compliance issues (e.g. how to avoid misleading or deceptive conduct or placing consumers under undue pressure). For example, one ADI trained staff that offering CCI to consumers was a legal obligation in itself, as opposed to training staff on the legal obligations attached to CCI sales practices; and
- the training programs provided by some ADIs focused on one particular product (usually CCI sold with home loans), providing only limited guidance on other products.

[40] We note that training requirements may be considered in future reviews of Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

133 In terms of content, some of the areas that were covered in the training provided by some ADIs included:

- the difference between general and personal advice (including that staff who operate within a general advice model must not provide any form of personal advice);
- how to determine consumer eligibility for CCI policy sales and claims;
- the need to communicate the relevant exclusions of the CCI policy;
- the need to communicate that CCI is optional to consumers; and
- the need to obtain informed consumer consent to the purchase of CCI.

134 Other positive features of training programs used by some ADIs included:

- training to ensure that consumers are not pressured or harassed into purchasing CCI (i.e. if the consumer indicates that they are not interested in the product a set number of times, the sales process is terminated);
- detailed discussion of the regulatory requirements and obligations including those contained in the Corporations Act, the Insurance Contracts Act and the Code of Banking Practice; and
- training on complaints handling processes.

Recommendation 9: Training programs

Distributors should review their training programs to ensure that they are provided to staff on an ongoing basis, and that they adequately address each of the issues raised in this report.

Monitoring systems

135 We identified concerns with the monitoring systems used by ADIs including that:

- some ADIs' monitoring systems did not appear to focus specifically on CCI, relating instead more broadly to general banking or insurance services;
- some ADIs did not actively monitor the conduct of staff while they sold CCI, with monitoring systems focusing instead on whether staff had undergone the required training and/or whether the correct documents were being distributed; and
- some monitoring systems were not structured to detect issues before they materialised into consumer complaints, breaches or policy cancellations.

136 Some of the proactive systems that were used included:

- reviewing reports about sales, complaints and cancellations on a regular basis to identify issues of concern (including appropriate follow-up with sales staff and/or consumers where issues were identified). We note that some ADIs requested these reports from their product issuers;
- sales verification calls (where the ADI contacted customers after they had purchased CCI to ensure that they understood the product they had purchased and confirm that the customer wished to retain the product);
- 'mystery shopping' programs (where the ADI used researchers posing as consumers to assess the sales process);
- internal audits of customer files;
- branch inspections or observation of staff conducting branch sales; and
- call recording and monitoring (e.g. to ensure that staff adhered to scripts, did not provide incorrect product information or unauthorised personal advice, and were otherwise compliant with the law). We note that three of the ADIs reviewed did not routinely record telephone calls for CCI sales.

137 Another strategy that some ADIs used to discourage poor sales practices was to reduce, or not pay any, commission otherwise payable to staff if the ADI identified problems with the staff member's selling practices. Of the 15 ADIs reviewed, nine had a commission or incentive program in place. Six of these ADIs took their staff's compliance behaviour into account when paying commissions.

Recommendation 10: Monitoring systems

Distributors should have documented monitoring systems in place that comprise a range of systems to detect non-compliant sales of CCI. These systems may include, for example:

- regular reviews of sales, complaints and cancellations reports (including appropriate follow-up with sales staff and/or consumers where issues are identified);
- mystery shopping exercises; and
- sales verification calls.

We consider it best practice for distributors that sell CCI over the telephone to record calls and have processes in place to monitor recorded calls.

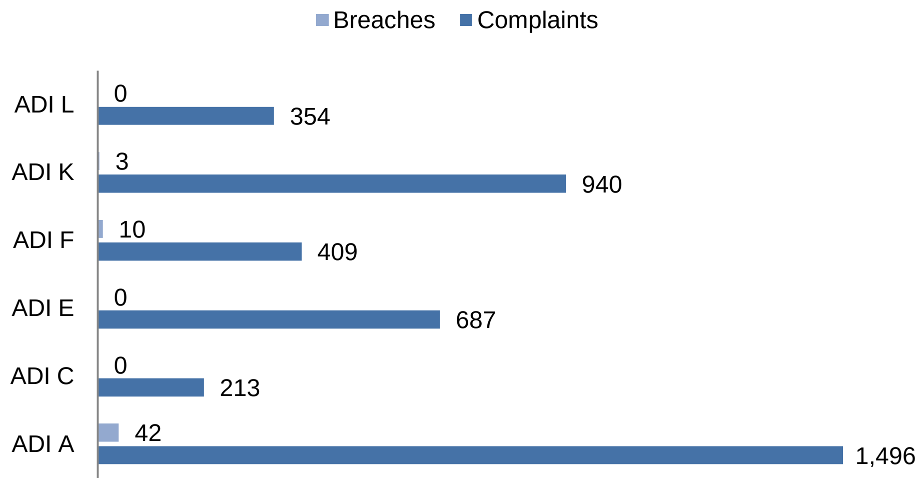
Complaints and breaches

138 The ADIs all indicated that they had systems in place for recording complaints and breaches.

139 However, we were concerned about the adequacy of these systems because:

- there was significant variation in the number of complaints that ADIs reported receiving (ranging from zero to over 3000[41]); and
- as shown in Figure 2, the number of breaches that some ADIs recorded[42] was low relative to the number of complaints these ADIs received.

Figure 2: Comparison of complaints and breaches



Source: ASIC review, 2009

140 From the information we were provided with, we identified that:

- 50% of complaints were sales related;[43]
- at least six ADIs had received complaints from consumers who did not believe they had authorised the purchase of insurance;[44] and
- at least eight ADIs received complaints from consumers whose requests to cancel CCI policies had not been actioned.

[41] Complaints figures relate to the full review period from 1 January 2009 to 12 February 2011. This is because some ADIs did not break their complaints data down on a monthly basis.
[42] This includes both breaches that are reportable to ASIC and less significant breaches recorded by the ADIs. Breach figures also relate to the full review period from 1 January 2009 to 12 February 2010 because some ADIs did not break their breach data down on a monthly basis.
[43] This figure is based on 14 ADIs. One ADI could not provide us with the requested breakdown of complaints.
[44] This figure is based on 13 ADIs. Two ADIs could not provide us with details of the complaints they had received.

Further work

141 We have seen from previous work we have undertaken that more rigorous procedures to record matters greatly assist in identifying trends in complaints and breaches, and result in non-compliant sales and other compliance issues being recognised and rectified in a more timely fashion.

142 In this context, the low number of complaints and/or breaches recorded by some ADIs we reviewed raises concerns about the rigour of procedures in this area, particularly given the high number of denied claims and policy cancellations we identified. As it was beyond the scope of our current review to investigate these issues in detail, we intend to undertake a second phase of this review.

143 In particular, we will investigate in more detail:

- the claims and complaints handling procedures used by ADIs and the insurers that issue CCI;
- the subject matter of complaints and the reasons for claims being denied and/or withdrawn and CCI policies being cancelled; and
- net loss ratios for CCI.

144 We will also follow up on this current review by:

- updating the information we provide to consumers about CCI; and
- reviewing the conduct of ADIs to assess the implementation of our recommendations.

145 We note that we have addressed the issues of concern (including those described in this report) that we identified with the individual ADIs that we reviewed.

146 Finally, we may conduct a further review, in the future, of non-ADI distributors of CCI.

F Regulatory framework

Key points

ASIC regulates the licensing, conduct and disclosure obligations of insurers and ADIs under the Insurance Contracts Act, the ASIC Act, the National Credit Code and the Corporations Act.

Industry codes of conduct also include standards that subscribers must observe.

Regulation by ASIC

147 ASIC regulates the licensing, conduct and disclosure obligations of insurers and ADIs under the Insurance Contracts Act, the ASIC Act, the National Credit Code and the Corporations Act.

Insurance Contracts Act

148 The Insurance Contracts Act regulates the content and operation of insurance contracts. It enshrines a statutory 'duty of utmost good faith' between an insured and an insurer, which provides that:

> A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.[45]

149 The Insurance Contracts Act also:

- sets out what consumers must do when applying for an insurance policy, including their duty to disclose to the insurer all relevant information about the risks they are accepting;
- requires the insurer to clearly inform consumers of the restrictions in the insurance policy before a consumer enters into a contract; and
- contains prescribed inclusions and exclusions for standard CCI contracts.[46]

[45] Section 13 of the Insurance Contracts Act.
[46] See Pt 5, Div 1 of the Insurance Contracts Act, and Pt 2, Div 5 of the Insurance Contracts Regulations.

150 Proposed reforms to the Insurance Contracts Act include ASIC:

- being able to take licensing action for a breach of the duty of utmost good faith in relation to claims handling;
- having power to take representative action on behalf of third-party beneficiaries (as well as insureds); and
- having power to intervene in any proceedings under the Insurance Contracts Act (based on s1330 of the Corporations Act).[47]

ASIC Act

151 Part 2, Division 2 of the ASIC Act covers broad standards of conduct, including prohibitions on misleading representations (s12DB) and misleading or deceptive conduct (s12DA) in relation to all financial services, including insurance.

National Credit Code

Credit regulation

152 The National Credit Code is administered by ASIC[48] and contains specific provisions relating to CCI financed by loan contracts, including that:

- commissions must not exceed 20% of the premium (excluding government charges);[49]
- on termination of a credit contract, the remaining CCI premium must be rebated to the consumer following a statutory formula;[50] and
- a credit contract should contain the prescribed content, including details of the CCI insurer and particulars of the insurance (including cost information).[51]

153 The National Credit Code came into force on 1 July 2010, so it did not apply during the period reviewed in this project (1 January 2009 to 31 December 2009). During this period, the Uniform Consumer Credit Code (UCCC) was still in force and was administered by the Australian states and territories. The provisions of the National Credit Code described above are the same as the relevant provisions in the UCCC.[52]

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[47] A Bill to amend the Insurance Contracts Act was introduced into Parliament in 2010 but did not pass the Senate before the August general election. We understand that the Bill will be reintroduced in the Autumn 2011 sitting.
[48] On 1 July 2010, ASIC became the national regulator for consumer credit and finance broking. The National Credit Code re-enacts (with some amendments) the Uniform Consumer Credit Code (UCCC), previously administered by the Australian states and territories.
[49] Section 145 of the National Credit Code.
[50] Section 148 of the National Credit Code.
[51] Section 17 of the National Credit Code.
[52] On commission for CCI, see s135 of the UCCC; on termination of a CCI contract if a credit contract is terminated, see s138 of the UCCC; and on matters that must be in a contract, see s15 of the UCCC.

Financial hardship

154 Under s72 of the National Credit Code, consumers can apply for changes to their credit contract[53] on the grounds of financial hardship (including unemployment, illness or another reasonable cause) if they reasonably expect to meet their credit obligations in the long run.

155 Industry codes of practice subscribed to by ADIs, such as the Code of Banking Practice[54] and the Mutual Banking Code of Practice,[55] also include commitments by code signatories to help customers overcome financial difficulties with their credit products.

156 While these statutory rights are different from the protections provided by CCI policies, a consumer's awareness of them may impact on whether or not they decide they need a particular CCI product.

Corporations Act

Licensing

157 The Corporations Act requires persons who carry on a business of providing financial services in Australia to hold an Australian financial services (AFS) licence or, depending on the financial services provided, be an authorised representative of an AFS licensee.

158 The definition of 'financial services' under the Corporations Act includes the issue of general and life insurance products and related activities (such as arranging for the issue of general and life insurance products and providing advice on these products).

159 All the insurers and ADIs that participated in this review hold AFS licences.

160 An AFS licensee must comply with a number of obligations set out in the Corporations Act, including (relevantly, for this report):

- doing all things necessary to ensure that the financial services covered by their AFS licence are provided efficiently, honestly and fairly;[56]
- complying with the financial services laws;[57]
- taking reasonable steps to ensure that their representatives comply with the financial services laws;[58]

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[53] A credit contract is defined in s4 of the National Credit Code. The credit must be for personal, domestic or household purposes; to purchase, renovate or improve residential property for investment purposes; or to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property.
[54] Clause 25.2 of the Code of Banking Practice.
[55] Clause 24 of the Mutual Banking Code of Practice.
[56] Section 912A(1)(a).
[57] Section 912A(1)(c). For this review, it is relevant that 'financial services law' includes relevant provisions of the Corporations Act, Div 2, Pt 2 of the ASIC Act and the Insurance Contracts Act: s761A of the Corporations Act and reg 7.6.02A of the Corporations Regulations 2001 (Corporations Regulations).

- ensuring that its representatives are adequately trained, and are competent, to provide the financial services covered by its AFS licence;[59] and
- having a dispute resolution system available for retail clients that meets certain requirements, including membership of an ASIC-approved external dispute resolution scheme.[60]

Disclosure

161 Under the Corporations Act, AFS licensees must also comply with certain disclosure requirements when providing financial services to retail clients.[61] Some of these requirements also depend on whether the licensee provides general advice or personal advice.[62]

162 Generally, these requirements compel issuers and/or distributors of CCI products to provide the following documents to their clients:

- Financial Services Guides (FSGs);
- PDSs; and
- Statements of Advice (SOAs) (for personal advice only).

163 The Corporations Act specifies the content requirements for each of these documents and when they must be provided.[63] The Corporations Act also requires that these documents be presented in a clear, concise and effective manner.[64]

Regulatory guides

164 Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) gives guidance on the meaning of 'provide financial product advice' and the meaning of 'deal in a financial product'. It also provides guidance on the obligations that apply to providers of financial services, including the differences between personal advice and general advice.

165 Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) sets out minimum training standards that apply to advisers and how advisers can meet these training standards.

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[58] Section 912A(1)(ca).
[59] Section 912A(1)(f).
[60] Sections 912A(1)(g) and 912A(2).
[61] Section 761G defines a retail client. CCI products are deemed as being provided to retail clients: see s761G(b)(v) and 761G(7), and regs 7.1.15 and 7.1.25.
[62] See Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36) for discussion of the differences between personal advice and general advice.
[63] Part 7.7 (for FSGs and SOAs) and Pt 7.9 (for PDSs). Note that reg 7.9.16 also requires PDSs to contain more detailed information about CCI products, including a table of benefit limits and a brief explanation of the purposes of CCI.
[64] Sections 942B(6A) and 942C(6A) (for FSGs), s947B(6) and 947C(6) (for SOAs), and s1013C(3) (for PDSs).

166 Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78) deals with breaches that are reportable to ASIC. In conjunction with reportable breaches, we consider it important for good monitoring procedures that all non-significant breaches are identified.

167 RG 168 gives policy guidance on preparing a PDS in compliance with the Corporations Act. It sets out good disclosure principles and explains how ASIC will monitor the use of PDSs and enforce the PDS requirements.

168 Regulatory Guide 175: *Licensing: Financial product advisers—Conduct and disclosure* (RG 175) considers how certain conduct and disclosure obligations in Pt 7.7 of the Corporations Act apply to the provision of financial product advice to retail clients.

Regulation by APRA

169 APRA authorises life insurers and general insurers to conduct insurance business in Australia under the *Insurance Act 1973* and *Life Insurance Act 1995*, respectively. APRA also establishes and enforces prudential standards, which life insurers and general insurers are required to comply with.

170 In addition, APRA authorises ADIs to provide banking services under the *Banking Act 1959*. While ‘banking services’ do not include the distribution of insurance products, APRA authorises ADIs to provide services such as taking money on deposit, and is responsible for the prudential supervision of ADIs.

Regulation by industry

Insurer codes of practice

171 The General Insurance Code of Practice is a voluntary code of conduct that sets out standards of good practice for the general insurance industry. Signatories are insurers, rather than intermediaries or third-party distributors of insurance products.

172 The General Insurance Code of Practice is designed to raise insurers’ service standards for consumers when they are selling insurance, dealing with insurance claims, responding to disasters and handling complaints.

ADI codes of practice

173 As set out in paragraph 155, ADIs may subscribe to their own industry codes of practice (Code of Banking Practice and the Mutual Banking Code of Practice).

174 In addition to covering issues such as financial hardship, these codes also cover areas such as transparency and the provision of relevant and up-to-date documentation to consumers.

Appendix: Methodology

175 To obtain information for our review, we issued notices under the ASIC Act to 15 ADIs,[65] requiring them to produce information about their CCI sales practices and statistical data about CCI premiums, cancellations, commissions and claims.

176 Our selection of the 15 ADIs was based on:

- our desire to examine a cross-section of different ADIs, including Australian-owned ADIs, foreign subsidiary ADIs and regionally based ADIs;
- known or perceived market share; and
- existing information available to us (such as complaints and breach notification reports lodged under s912D).

177 After reviewing the information we obtained from the 15 ADIs, we contacted them again for further clarification and additional information, where appropriate.

178 The 15 ADIs provided us with information about CCI products sold with personal loans, credit cards, home loans, business loans, margin loans and lines of credit. However, we decided to limit our review to CCI products distributed by ADIs with personal loans, credit cards and home loans. Not all ADIs sold CCI in relation to these products. A summary is shown in Table 5.

Table 5: CCI products sold by ADIs reviewed

Type of CCI product	Total number of ADIs that sold the product
Home loans	11
Personal loans	13
Credit cards	12

Source: ASIC review, 2009

179 We found that very few ADIs distributed other types of CCI products, and data was often not readily available, or easily comparable, for these products due to limited sales numbers.

[65] ASIC issued notices to 16 ADIs—however, one ADI sold no CCI products and, therefore, this ADI was excluded from the review.

180 The information we requested from the ADIs for our review covered the period 1 January 2009 to 12 February 2010. However, for consistency and future comparison purposes, we decided to limit our review and reporting in relation to this information to the period 1 January 2009 to 31 December 2009.[66]

181 We also conducted desk research and consulted with the Insurance Council of Australia and the Financial Services Council.

182 We note that we intend to contact at least some of the life and general insurance issuers that issue the CCI products distributed by the ADIs we reviewed in the second phase of our review: see paragraph 143.

[66] Most of the data ASIC requested under the notices was broken down into monthly periods—however, where this was not the case, we averaged out figures provided by the ADIs that were calculated over the full review period to represent a 12-month period. In relation to data about the number of cancelled CCI policies, however, this was calculated over the full review period because the calculation was based on the total amount of CCI policies in force, and that figure was initially obtained by us for 12 February 2010.

Key terms

Term	Meaning in this document
ADI (authorised deposit-taking institution)	Has the meaning given in s5 of the National Credit Act
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
CCI	Consumer credit insurance
Code of Banking Practice	The Australian Banking Association's Banking Code of Practice to which banks subscribe
consumer	A natural person or strata corporation Note: See s5 of the National Credit Act
conversion rate	The number of CCI policies sold during the review period as a percentage of the number of underlying loans issued during the review period.
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
FSG (Financial Services Guide)	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
full review period	The full period for which we requested data, 1 January 2009 to 12 February 2010
Insurance Contracts Act	*Insurance Contracts Act 1984*

Term	Meaning in this document
Insurance Contracts Regulations	Insurance Contracts Regulations 1985
LVR	Loan-to-value ratio
Mutual Banking Code of Practice	The code of practice to which members of Abacus Australian Mutuals subscribe
National Credit Act	*National Consumer Credit Protection Act 2009*
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
PDS (Product Disclosure Statement)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
Pt 7.7 (for example)	A part of the Corporations Act (in this example numbered 7.7), unless otherwise specified
reg 7.6.02A (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.6.02A), unless otherwise specified
RG 78 (for example)	An ASIC regulatory guide (in this example numbered 78)
s766E (for example)	A section of the Corporations Act (in this example numbered 766E), unless otherwise specified
SOA (Statement of Advice)	A document that must be given to a retail client for the provision of personal advice under Subdivs C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A for the exact definition.
UCCC	Uniform Consumer Credit Code

Related information

Headnotes

authorised deposit-taking institutions (ADIs), complaints and breaches, consumer credit insurance (CCI), disclosure, monitoring systems, Product Disclosure Statements (PDSs), sales practices, sales scripts, training programs

Regulatory guides

RG 36 *Licensing: Financial product advice and dealing*

RG 78 *Breach reporting by AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

Legislation

ASIC Act, Pt 2, Div 2, s12DA, 12DB

Banking Act 1959

Corporations Act, Pt 7.7, Pt 7.9, s761A, 761G, 761G(b)(v), 761G(7), 912A(1)(a), 912A(1)(c), 912A(1)(ca), 912A(1)(f), 912A(1)(g), 912A(2), 912D, 942B(6A), 942C(6A), 947B(6), 947C(6), 949A, 992A, 992A(3), 1012G, 1012G(1)(a), 1012G(2)(a). 1012G(2)(b), 1012G(3), 1012G(3A), 1013C(3), 1330; Corporations Regulations, regs 7.1.15, 7.1.25, 7.6.02A, 7.9.16

Insurance Act 1973

Insurance Contracts Act, Pt 5, Div 1, s13; Insurance Contracts Regulations, Pt 2, Div 5, regs 21, 23

Financial Sector (Collection of Data) Act 2001

Life Insurance Act 1995

National Consumer Credit Act; National Credit Code, s4, 17, 72, 145, 148, 204; National Consumer Credit Regulations 2010, reg 93

UCCC, s15, 135, 138

Reports

ACCC, 1998, *Consumer credit insurance review: Final report*

APRA, 8 December 2010, *Statistics: Half yearly general insurance bulletin: June 2010*

Australian Trade Practices Commission, 1991, *The market for consumer credit insurance: A study of competition, efficiency and the welfare of consumers*

Financial Ombudsman Service, 2010, *General Insurance Code of Practice: Overview of the year 2009/2010*

G Renouf and Redfern Legal Centre, 1991, *Thirty one cents in the dollar: A report on consumer credit insurance from the consumer's perspective*

Media and information releases

09-184AD *ASIC responds to concerns regarding ADMS direct marketing calls*

09-238AD *Citigroup responds to ASIC concerns about telephone sales*