ASIC
Australian Securities & Investments Commission

CONSULTATION PAPER 224

Facilitating electronic financial services disclosures

November 2014

About this paper

This paper seeks feedback from financial product and services providers, consumers of financial services and their representatives and other interested parties on our proposed approach to the electronic delivery of financial services disclosures.

We are seeking feedback on providing class order relief to facilitate default electronic delivery of financial services disclosures and to facilitate the use of more innovative Product Disclosure Statements.

Our proposals also update our guidance in Regulatory Guide 221 *Facilitating electronic financial services disclosures* (RG 221). A draft updated version of RG 221 is available on our website at www.asic.gov.au/cp under CP 224.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 14 November 2014 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We want to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on electronic delivery of financial services disclosures. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section E, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 16 January 2015 to:

Ashly Hope
Strategic Policy Advisor
Australian Securities and Investments Commission
email: ashly.hope@asic.gov.au

What will happen next?

Stage 1	14 November 2014	Release of ASIC consultation paper and draft updated RG 221
Stage 2	16 January 2015	Comments due on the consultation paper
Stage 3	March 2015	Updated regulatory guide and class orders released

A Background to the proposals

Key points

Financial services disclosures (disclosures) can generally be delivered electronically, but, for most disclosures, our current guidance combined with the existing legal requirements mean that the default method of delivery is a printed disclosure document, sent or given.

We think that enabling financial services providers (providers) to deliver disclosures electronically as a default if they choose to do so will have benefits to both consumers and providers, while preserving choice for consumers. Our initial consultations with industry and consumer representatives supported, in principle, enabling electronic delivery to be the default method, provided consumer choice is preserved and safeguards for consumers are in place.

We also think that there remain some barriers in the law to the use of more innovative Product Disclosure Statements (PDSs), such as interactive PDSs.

We are consulting on various proposals, and seek your feedback on our approach to the electronic delivery of financial services disclosures, and on the draft updated Regulatory Guide 221 *Facilitating electronic financial services disclosures* (draft updated RG 221), which is available on our website at www.asic.gov.au/cp under CP 224.

Note: See the draft updated RG 221 for a list of the 'Key terms' that are also relevant to this consultation paper.

Benefits of electronic delivery of disclosures

1 Many financial services disclosures are lengthy, printed documents. Technology is now such that we would expect to see more use of electronic methods to create and deliver mandated disclosure information. We think that the use of technology to deliver disclosures, including in more innovative forms, can have benefits for both consumers and providers because:

(a) providers may be able to present the content of the disclosure in ways that are more engaging and informative for consumers than traditional or printed disclosure documents, and deliver it to consumers in faster and more convenient ways; and

(b) there may be potential cost savings for providers in delivering disclosures electronically.

2 Internet usage is pervasive in Australia and initial feedback, including submissions to Report 391 *ASIC's deregulatory initiatives* (REP 391), indicates that providers want to distribute more disclosures electronically.

3 Although originally intended to facilitate electronic delivery of disclosures,[1] the legislation and regulations and our current guidance have not kept up with consumer and industry demand.

4 We think that, even when consumers prefer electronic delivery of disclosures, behavioural biases can lead to inertia or retaining the status quo, which means consumers do not request that form of disclosure. Enabling electronic disclosure to be the default method (depending on provider preference) may overcome that behavioural bias, with those consumers who prefer electronic delivery of disclosures being more likely to receive it.

> Note: In this paper we refer to the 'default method of delivery of disclosures' as the provider's first choice of communication method for financial services disclosures, where the consumer has provided or nominated details for one or more methods of communication. For example, if a provider chooses default electronic delivery, it would deliver disclosures electronically as a matter of course and allow clients or consumers to opt in to printed and posted delivery.

5 To this end, we are considering ways to facilitate more electronic disclosure, while preserving choice for both consumers and providers. We understand, from consultations with industry, that this would reduce costs for providers and enable them to better align with consumer preferences.

Default method of delivery of disclosures

6 The impact of the current legislative requirements, combined with our current guidance in RG 221, mean that the default method for delivery of most disclosures is in printed form either personally or via post to an address. That is, while electronic delivery of disclosures is allowed, clients must actively choose to have disclosures delivered electronically.

7 Most provisions allow for disclosures to be delivered in person, sent to an address, or delivered in any way agreed by the client. When the legislation provides that the method of disclosure is delivery to an address, this includes an electronic address. However, our current guidance suggests that express agreement must be obtained before a provider can deliver a disclosure to an email address.

8 For other methods of delivery (including other methods of electronic delivery), the method must typically be agreed with the client or the client's agent.

9 As a consequence, under the current arrangements, unless a client agrees otherwise, a disclosure must be delivered in printed form either personally or via post to an address—that is, the default method of delivery is printed and posted.

[1] Corporate Law Economic Reform Program Bill 1998, Explanatory Memorandum, paragraphs 8.10–8.17.

Barriers to more innovative forms of disclosure

10 Providers are generally able to deliver disclosures electronically, but while electronic versions of disclosures are routinely made available, these are generally static duplicates of a printed document.

11 We see the barriers to more innovative, particularly interactive, web-based disclosure, as:

(a) *Provider barriers*—The cost of creating and maintaining content while needing to identify a clear corresponding benefit, and concerns about liability;

(b) *Consumer barriers*—Continued consumer demand for printed disclosure; and

(c) *Technical or perceived legal/regulatory barriers*—The requirement for the disclosure to be able to be stored by the consumer, various legal requirements that imply a printed version, and a perception that a product issuer cannot produce two versions of a PDS for the same product with different content and presentation.

12 While the law does not prevent fully electronic PDSs (potentially incorporating a range of media), there are nevertheless some legal barriers and other aspects of the legislation that could potentially prohibit or discourage the use of more innovative PDSs. These are:

(a) uncertainty about the requirement for the title 'Product Disclosure Statement' to be used on the cover or at the front of a PDS (s1013B of the *Corporations Act 2001* (Corporations Act));

(b) the requirement for certain PDSs, under the shorter PDS regime, to be a particular page length (see Sch 10C (margin loans), Sch 10D (some superannuation products) and Sch 10E (simple managed investment schemes) of the Corporations Regulations 2001 (Corporations Regulations));

(c) record-keeping obligations that require a PDS to be presented in a way that allows the client to retain it in a readily accessible format for future reference (reg 7.9.02B of the Corporations Regulations);

(d) a perception that a product issuer cannot produce two versions of a PDS for the same product with different content and presentation; and

(e) the obligation to give copies of a PDS on request (s1015D(4)(b)).

Note: In this paper, references to sections, parts and chapters are to the Corporations Act, and references to regulations are to the Corporations Regulations.

13 The requirement for some PDSs to be lodged with ASIC in s1015B is also a practical barrier to electronic PDSs. These are PDSs for managed investment products that are traded on a financial market, or are able to be traded on a

financial market, and represent a very small number of total PDSs produced. ASIC cannot currently process electronically lodged PDSs.

Stakeholder feedback

14 In November 2013 we sought feedback from ASIC's External Advisory Panel (EAP) on whether we had reached a point where electronic disclosure is appropriate for most disclosures. The response was overwhelmingly that Australia was well past this 'tipping point', suggesting that disclosure by electronic means should be the default method of delivery. That is, providers should be able to deliver disclosures electronically and allow clients or consumers to opt in to printed and posted delivery. Targeted consultation with product issuers also supported this proposition.

15 We also sought feedback from ASIC's Consumer Advisory Panel on enabling electronic disclosures to be the default method. Key concerns raised by the Panel included the possible outcomes for consumers who do not have internet access, or have difficulty accessing and using online resources. The Panel also raised concerns about online privacy and security and perceived frequency in changing email addresses, which could result in consumers missing out on disclosures, or missing the opportunity to opt in to another disclosure format.

16 In REP 391, we noted that we were currently undertaking targeted consultation with market participants to identify where the barriers lie to increased electronic disclosure, with a view to removing those barriers and facilitating more electronic disclosure where possible.

17 Feedback to REP 391 supported this proposal. For financial services, one respondent to the report suggested that consent before electronic delivery was a 'very real barrier to achieving a substantial shift towards electronic disclosure'. Another respondent noted that restrictions such as page numbers, content and font size meant that registrable superannuation entities had not been able to apply the same level of innovation as they had been using in other mandated disclosure material.

Options considered in this consultation paper

18 We are considering the following options:

(a) *Option 1*—Give providers an additional option for delivery of disclosures, which would enable them to meet the requirements of delivery if they publish disclosures electronically and then notify the client that the disclosure is available;

(b) *Option 2*—Make it clear that if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically;

(c) *Option 3*—Facilitate the use of more innovative PDSs;

(d) *Option 4*—A combination of Options 1–3; and

(e) *Option 5*—Make no changes to our guidance and provide no additional class order relief, thereby maintaining the status quo.

Proposal

A1 We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1–3 to further facilitate electronic disclosure. This feedback seeks your overarching views; more detailed questions on the particular proposals are in Sections B and C.

Your feedback

A1Q1 Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.

A1Q2 What benefits do you consider will result from our proposed approach?

A1Q3 What disadvantages do you consider will result from our proposed approach?

A1Q4 Are there any other options we should consider to meet our regulatory objective of further facilitating electronic disclosures and encouraging the use of more innovative PDSs, while ensuring that consumer choice about the method by which they receive disclosures is not removed?

Rationale

19 Our proposals in Option 1–3 are designed to enable providers to deliver disclosures electronically as the default method if they choose to do so, and encourage more electronic disclosure.

20 We expect this to result in more consumers receiving disclosures electronically. As discussed in paragraph 1, this will save money and time for providers and also have benefits for consumers, including by being faster and more convenient. It may also mean the content of disclosures can evolve in new ways that are more engaging for consumers.

21 Our proposed relief will provide an additional method for the delivery of disclosures electronically. This will allow providers to change their default method of delivery for disclosures from printed to electronic, should they choose to do so. Feedback suggests that many providers would prefer to set

electronic delivery as the default method, so we would expect this to lead to an increase in electronic delivery of disclosures.

22 Other modifications will remove barriers to the use of more innovative PDSs.

23 Sections B–C set out in detail our proposals for Options 1–3 and our rationale for each proposal. We are seeking feedback on each proposal. Depending on the feedback we receive, we may implement all, some or none of the proposals.

24 We note that, while we hope that more electronic delivery of disclosures, and more innovative electronic formats, might go some way to improving consumer engagement with disclosure, these proposals are not intended to overcome the shortcomings of disclosure more broadly, including that, even when well designed, disclosure is ultimately less effective in addressing some market problems than others (e.g. supply-driven competition and conflicts of interest): see the Financial System Inquiry's *Interim report* for recent observations on the limitations of disclosure.[2]

25 In addition, we acknowledge that electronic delivery of disclosures does not necessarily offer the best outcome for all consumers and that preferred designs, formats and methods of delivery can vary from time to time, person to person, and disclosure to disclosure. We hope, however, that by making the regulatory environment genuinely technology neutral, we will enable providers to innovate and invest in better, more effective disclosure.

26 While the electronic environment can present new and different challenges for both consumers and providers, it can also offer improved ways to convey information and encourage understanding. It is not our intention to create a different or more onerous regulatory regime for electronic disclosure, but to explain how we apply general principles of good disclosure in the electronic environment.

Disclosures beyond financial services

27 We also acknowledge that many of the barriers to electronic financial services disclosures apply equally to credit disclosures and we would like to align the treatment of different kinds of disclosure in the future. As such, we also welcome any views or feedback that relate to disclosures beyond financial services: see Section D.

[2] Financial System Inquiry *Interim report*, July 2014, pp. 3-54–3-62, http://fsi.gov.au/files/2014/07/FSI_Report_Final_Reduced20140715.pdf.

B Enabling electronic disclosure to be the default method

Key points

We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically.

We also propose to provide class order relief to give providers an additional method for delivery of disclosures, which would enable them to publish disclosures electronically and then notify the client that the disclosure is available.

Delivery of disclosures to an email address

Proposal

B1 We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address.

Providers should still be satisfied that if the relevant provision requires the address to be 'nominated', that the email address has been nominated. We think in most circumstances this would be clear from the context (see draft updated RG 221.33), such as when a client provides an email address as part of an application.

Your feedback

B1Q1 Do you agree with this proposal? Please give reasons for your answer.

B1Q2 Are there other barriers to using email addresses for delivery of disclosures?

B1Q3 What are the consequences of making this change? For example, are there significant numbers of clients who have supplied email addresses and who currently do not have disclosures delivered to those email addresses, but who would be able to under this proposal?

B1Q4 Do you agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being delivered to that email address? If yes, are there any consumers or groups of consumers for whom this might not be the case?

B1Q5 When a provider is seeking an address from a client or potential client, should there be any information, warnings or advice given about the potential ways the address might be used?

B1Q6 Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?

B1Q7 Does it matter to whom the consumer provided the email address?

B1Q8 Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?

B1Q9 For providers, how do you currently determine that an address (postal or email) has been nominated for the purposes of delivery of disclosures such as PDSs and Financial Services Guides (FSGs)?

B1Q10 Do you think that emailed disclosures are more or less likely to be lost (e.g. through changes to email addresses or misdelivery) than posted disclosures? Please provide supporting evidence if possible.

B1Q11 Do you think that there is an issue with frequency of change of email addresses? Do you have any data to show frequency of change of email addresses?

B1Q12 Are there any particular contexts in which the current requirement for a client to 'nominate' an address would provide a barrier to efficient electronic disclosure—for example, obtaining an address for clients who acquire products through a third party such as an employer or other agent?

B1Q13 Where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, do you need any further guidance on whether you can use an email address, that you hold, to satisfy such a requirement?

B1Q14 Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients?

B1Q15 Please estimate any cost savings your business would expect to realise from this change.

B1Q16 Please estimate any additional costs that consumers might be expected to incur as a result of this change.

Rationale

28 When a disclosure may be delivered to an address, it can also, under the Corporations Act, be delivered to an email or electronic address. RG 221 currently states that, unless the law provides otherwise, express consent must be obtained to send a particular disclosure to an email address the provider is holding and, without this consent, disclosure must be delivered in printed form (either in person or to an address).

29 We think that this gives the impression that there is an additional, more stringent requirement for the use of an email address for the delivery of

disclosures compared with a postal address. We want to make it clear that this is not the case. An approach to consent that differentiates between electronic addresses and postal addresses is no longer warranted, particularly given increased usage of the internet and digital technology, and consumer acceptance that the provision of an email address to a business usually means that it will be used for the delivery of information from that business.

30 Implementing proposal B1 will make it clear that, if a consumer provides their email address to a provider, this is the same as a consumer providing their postal address: see draft updated RG 221.33–RG 221.35.

31 If a provision refers to an address 'nominated' by the consumer, a provider should be satisfied that the client has in fact nominated that address—whether a postal or email address—before relying on it to satisfy its delivery obligations.

32 Our guidance in draft updated RG 221 makes it clear that there is no additional requirement or distinction between email addresses and postal addresses and that, if a provider has been given both for the purposes of receiving information about financial products or services from that provider, either may be used.

33 We think in most cases it will be clear that an address has been nominated—for example, where a form asking for postal and email addresses includes a statement to the effect of 'you agree that your personal details may be used to provide you with information about your investments, including statements, transaction confirmations and reports'. Other statements and methods of determining nomination may also be used, provided it is clear that the relevant address has been nominated.

34 While this proposal, with the proposal B2, is intended to encourage and facilitate *more* electronic delivery of disclosures, we think it is important to note that the electronic delivery of disclosures is already permitted under the law. That means that some potential concerns about electronic disclosure such as privacy and security already exist and, importantly, are addressed by other legislation or rules (such as the *Privacy Act 1988* and the ePayments Code).

35 Nevertheless, we think it is important that financial services providers comply with their other legal obligations, and meet the expectations of their clients in terms of privacy and security. We emphasise this in draft updated RG 221: see RG 221.37.

Provision of disclosures on a website or other electronic facility

Proposal

B2 We propose to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients:

(a) are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and

(b) can still elect to receive that disclosure via an alternative method of delivery, on request.

Your feedback

B2Q1 Do you support this additional method of disclosure? Please give reasons for your answer.

B2Q2 Should clients be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility?

B2Q3 What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)?

B2Q4 How should notifications be made? Are there any design considerations you would suggest in the notice to help ensure clients do not miss the opportunity to access their disclosures? What guidance should ASIC give on this issue?

B2Q5 Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?

B2Q6 Do you think we should restrict the use of hyperlinks in notifications?

B2Q7 Please provide feedback on the costs to your business of:

(a) developing or modifying an electronic facility;

(b) printing and mailing disclosures (including, where possible, volumes and expected changes in volumes based on the proposal); and

(c) any savings you would expect to make were this proposal implemented.

B2Q8 Please estimate any costs that consumers might be expected to incur as a result of this change.

Rationale

36 Most disclosures may be notified or given in ‘electronic’ form or may be sent ‘electronically’, including through hyperlinks or references to website addresses. This is generally allowed under the Corporations Act for many kinds of disclosure, although where legislative provisions raised practical barriers for the delivery of certain types of disclosure in this way (i.e. PDSs, Statements of Advice (SOAs) and FSGs), we previously gave relief to

overcome these barriers: see Class Order [CO 10/1219] *Facilitating online delivery of PDSs, FSGs and SOAs*. However, this relief is conditional on the client or the client's agent agreeing to receive the disclosure in this way.

37 In practice, this means that providers need to either be provided with the client's email address or obtain the client's express agreement that they will 'pull' the disclosure from the product issuer's website or other electronic facility if they want to deliver disclosures electronically.

38 Default electronic delivery is already permitted for annual superannuation information to members. Trustees may place the information on a website, provided they notify members in the first year that the information is available, and that members may request printed or emailed copies of the information: see reg 7.9.75BA.

39 Behavioural economics and our own research tells us that people tend to accept defaults, either as a result of inertia, or because of the implied approval of those choices by the body setting the default.

40 As a consequence, the current default to printed disclosure may be detrimental to consumers, many of whom may prefer electronic disclosure, and also to product issuers for whom electronic disclosure is less costly than printing and posting.

41 For this reason, in addition to amending our guidance as described under proposal B1, we are proposing to give relief that would allow providers to make a disclosure available on a website or other electronic facility without first seeking the client's express agreement to receive disclosures in that way, provided clients are notified that the disclosure is available and can still elect to receive that disclosure via an alternative method of delivery, on request. Allowing the default method of delivery to be set to electronic disclosure in this way will not take away the option of having printed disclosures delivered for those consumers who do prefer this option, but will nudge those who we would expect to prefer this form of disclosure into receiving disclosures electronically.

42 We know that different consumers prefer to receive communications in different ways and are more or less likely to engage with different kinds of communication. Consequently, although the proposal intends to allow providers to shift the default method of disclosure to electronic, it still requires providers to make other methods of disclosure, such as print and post disclosure or direct delivery to an email address, available to consumers. Similarly, providers can choose to use one of these alternative methods of disclosure as their default or only method of disclosure if they, or their clients, prefer.

43 In addition, for SOAs, we have not previously allowed a provider to send a hyperlink to the document. We do not propose to include this restriction in

the updated class order because we now consider that many consumers access personal financial information online and via apps, and that financial services providers are well equipped to protect and secure this information.

44 The combined effect of proposals B1 and B2 is that the default method of delivery can, depending on provider preference, shift from printed form (personal or via post to an address) to electronic. That means that although consumers could still choose how they would prefer to receive disclosures, if they make no explicit choice and if this is the preference of the provider, they will receive disclosures electronically.

45 Implementation of the proposals would not operate to remove choices in the method of delivery, although we are conscious that if there is a change in the default method of delivery to electronic, it is particularly important that consumers are aware of this and have the opportunity to choose another method of delivery. We would like to provide guidance in the future on appropriate design of the new delivery method to help ensure that consumers do not miss this opportunity and can easily access or be provided with disclosures in whatever format they prefer, and welcome feedback on this issue.

C Facilitating the use of more innovative PDSs

Key points

We want to encourage more innovative forms of electronic disclosure. We propose to give relief to facilitate the use of more innovative PDSs, such as interactive PDSs.

We also plan to update our guidance to reflect this relief and clarify some areas where we see potential barriers to this disclosure format.

In both cases we propose to include safeguards to ensure consumers are not disadvantaged by more innovative PDSs.

Class order relief

Proposal

C1 We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief:

(a) from various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of *any* current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a 'copy';

(b) from the shorter PDS regime, provided the PDS communicates the same information that is required by that regime; and

(c) from the requirements for certain language to be included on the cover or 'at or near the front of' a PDS so they can equally apply to a more innovative PDS.

Your feedback

C1Q1 Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS?

C1Q2 Do you have any comments on the relief from the shorter PDS regime in proposal C1(b)? Do you have any other suggestions as to how this might be achieved? Do you think communicating 'the same information' is an appropriate limitation on a more innovative PDS?

C1Q3 Do you think that our proposed requirement in proposal C1(c) that the mandated language be included 'at or near the front of the PDS' will accommodate more innovative PDSs?

C1Q4 Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs?

C1Q5 Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?

Rationale

46 Various provisions of the Corporations Act require a copy of a PDS to be given on request. The provider would be able to give an electronic PDS to the client if the client had nominated an electronic address, but because it might be challenging or expensive to send a copy of a more innovative PDS, such as an interactive PDS, to a postal address or to give it in person, we propose to give relief to allow a provider to give a copy of *any* current PDS in use for the relevant product or offer. This means that a provider could provide a copy of a different printed PDS instead of the more innovative PDS where the client or provider preferred to do so.

47 There are also several provisions within the shorter PDS regime that mandate the number of pages of certain documents. It is unclear how this might apply if a PDS does not have pages in a written format. To enable providers to use more innovative PDSs (including interactive PDSs), we propose to give relief from these requirements provided the more innovative PDS contains the same information required by the shorter PDS regime.

48 The language 'at or near the front of' was not drafted with more innovative PDSs in mind. We propose to give relief so that this can apply equally to printed and more innovative PDSs, such as interactive PDSs. For example, our relief would provide that the title 'Product Disclosure Statement' should be used 'at or near the beginning of the PDS'. In an interactive PDS, this could mean the title could be at the top of a webpage, displayed on launch of an app or spoken at the beginning of a video. We also intend to update our guidance to make this clear: see draft updated RG 221.44–RG 221.48.

Updated regulatory guidance

Proposal

C2 We propose to update our guidance in RG 221 to:

(a) make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version;

(b) make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and

(c) include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).

Your feedback

C2Q1 Do you agree with this proposal? Please give reasons.

C2Q2 Do you consider that there are any other areas where a lack of clarity of our view would prevent or discourage you from producing a more innovative PDS?

C2Q3 Are there any other risks to consumers that may be more apparent in the electronic environment?

C2Q4 Do you think, where it does not already, any of our proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs?

C2Q5 Do you agree with our updated good practice guidance in Section D of draft updated RG 221?

C2Q6 Do you think complying with our updated good practice guidance would be too onerous?

C2Q7 Is there anything else you think would be usefully covered in our good practice guidance?

Rationale

49 We understand that, even when a provider produces a more innovative PDS (such as an interactive PDS), the provider might still want to have a printed or printable version to accommodate varying client preferences.

50 We believe Pt 7.9 operates to allow a provider to have more than one PDS for the same financial product or offer—for example, a printed version and a separate interactive version, provided that each version of the PDS satisfies the requirements of Pt 7.9. There is nothing in the law that prohibits the use of more than one PDS for the same product or offer. We propose to update our guidance to make this clear: see draft updated RG 221.50.

51 We are also proposing to update our guidance around the requirement that a consumer be able to identify the information that is part of the PDS. This is because we think it is particularly important that providers are aware of and meet this obligation in the electronic environment: see draft updated RG 221.57–RG 221.59.

52 We think that the electronic environment can present some challenges to certain consumers. There may be more opportunity for misunderstanding or distraction or important information being downplayed. As such, we are proposing to include some guidance around making more innovative PDSs readily navigable and ensuring consumers are not distracted or diverted from important information: see draft updated RG 221.60–RG 221.63.

53 This might mean a menu feature in an app, chapters in a video or a contents sidebar or similar on a webpage, which the client can use to immediately go to sections of the PDS, such as significant benefits and risks, the cost of the product, factors affecting returns, significant taxation implications, or how to complain.

54 We think in the electronic environment it might be easier for clients to be distracted by special features and therefore they might not engage with the information they need to make an informed decision. For example, while 'gamification' can be a good way to engage consumers and we encourage providers to explore this kind of disclosure, if a PDS incorporates a game feature that the consumer can spend an indefinite amount of time on, it may take their attention away from other important parts of the disclosure.

55 We also suggest that providers use caution in linking to marketing material that might distract from mandated disclosure material.

56 It is important that disclosures are designed in a way that best meets consumer needs and allows for the differing ways people process and retain information. Small details can make important differences in how engaging and informative disclosure is.

57 In our guidance in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168), we encourage providers to undertake consumer testing of proposed and existing disclosures to inform the design to help ensure disclosures are meeting consumer needs. We think this is particularly important for more innovative PDSs.

D Electronic delivery of credit disclosures

Key points

While we have provided relief and guidance to facilitate more electronic financial services disclosures, different requirements apply to disclosures relating to credit services. In particular, there is a requirement for written consent to electronic disclosure in some cases.

We are seeking feedback on whether there is a need to align the treatment of financial services disclosures and credit disclosures in the future.

58 The *National Consumer Credit Protection Act 2009* (National Credit Act) provides for disclosure and other documents to be given to debtors, mortgagors and guarantors. In some instances, these documents can be given electronically.

59 The obligations in the National Credit Act and the Electronic Transactions Regulations 2000 that relate to the giving of credit documents are different from the obligations in the Corporations Act. In particular, debtors, mortgagors and guarantors must:

(a) provide address nominations (including nominations of electronic addresses such as emails) in writing (including electronically); and

(b) give their consent (in some cases written consent) before they can be provided with electronic disclosure.

60 The need for written consent in some situations could mean that the default method of giving credit disclosures may continue to be printed documents. Additionally, we acknowledge that these obligations could also cause difficulties for credit licensees seeking to provide services to their customers through call centres.

Our position

D1 We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.

Your feedback

D1Q1 Do you agree we should align the treatment of financial services disclosures and credit disclosures? Please give reasons for your answer.

D1Q2 Have you encountered barriers to the electronic provision of credit disclosures? If so, what are those barriers?

D1Q3 Please estimate any compliance cost savings you would expect to realise if provisions for credit disclosures were aligned with our proposals for financial services disclosures.

E Regulatory and financial impact

61 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) ensuring consumers are in a position to make informed decisions about financial services and products; and

(b) reducing compliance costs for financial services providers.

62 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

63 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

64 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

List of proposals and questions

Proposal		Your feedback	
A1	We are considering the threshold options set out in paragraph 18. Depending on feedback, we propose to implement Options 1–3 to further facilitate electronic disclosure. This feedback seeks your overarching views; more detailed questions on the particular proposals are in Sections B and C.	A1Q1	Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.
		A1Q2	What benefits do you consider will result from our proposed approach?
		A1Q3	What disadvantages do you consider will result from our proposed approach?
		A1Q4	Are there any other options we should consider to meet our regulatory objective of further facilitating electronic disclosures and encouraging the use of more innovative PDSs, while ensuring that consumer choice about the method by which they receive disclosures is not removed?
B1	We are proposing to update our guidance in RG 221 to make it clear that, if a financial services provider has an email address for a client, they do not need consent to use that address to deliver disclosures electronically, in the same way that the provision of a postal address is sufficient consent for the delivery of disclosures to that postal address. Providers should still be satisfied that if the relevant provision requires the address to be 'nominated', that the email address has been nominated. We think in most circumstances this would be clear from the context (see draft updated RG 221.33), such as when a client provides an email address as part of an application.	B1Q1	Do you agree with this proposal? Please give reasons for your answer.
		B1Q2	Are there other barriers to using email addresses for delivery of disclosures?
		B1Q3	What are the consequences of making this change? For example, are there significant numbers of clients who have supplied email addresses and who currently do not have disclosures delivered to those email addresses, but who would be able to under this proposal?
		B1Q4	Do you agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being delivered to that email address? If yes, are there any consumers or groups of consumers for whom this might not be the case?
		B1Q5	When a provider is seeking an address from a client or potential client, should there be any information, warnings or advice given about the potential ways the address might be used?
		B1Q6	Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?
		B1Q7	Does it matter to whom the consumer provided the email address?
		B1Q8	Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?

Proposal	Your feedback
	B1Q9 For providers, how do you currently determine that an address (postal or email) has been nominated for the purposes of delivery of disclosures such as PDSs and Financial Services Guides (FSGs)? B1Q10 Do you think that emailed disclosures are more or less likely to be lost (e.g. through changes to email addresses or misdelivery) than posted disclosures? Please provide supporting evidence if possible. B1Q11 Do you think that there is an issue with frequency of change of email addresses? Do you have any data to show frequency of change of email addresses? B1Q12 Are there any particular contexts in which the current requirement for a client to 'nominate' an address would provide a barrier to efficient electronic disclosure—for example, obtaining an address for clients who acquire products through a third party such as an employer or other agent? B1Q13 Where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, do you need any further guidance on whether you can use an email address, that you hold, to satisfy such a requirement? B1Q14 Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients? B1Q15 Please estimate any cost savings your business would expect to realise from this change. B1Q16 Please estimate any additional costs that consumers might be expected to incur as a result of this change.

Proposal	Your feedback
B2 We propose to give class order relief to provide an additional method of delivery for most Ch 7 disclosures (where not already permitted), allowing providers to make a disclosure available on a website or other electronic facility, provided clients: (a) are notified (e.g. via a link or a referral to a web address or app) that the disclosure is available; and (b) can still elect to receive that disclosure via an alternative method of delivery, on request.	B2Q1 Do you support this additional method of disclosure? Please give reasons for your answer. B2Q2 Should clients be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility? B2Q3 What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)? B2Q4 How should notifications be made? Are there any design considerations you would suggest in the notice to help ensure clients do not miss the opportunity to access their disclosures? What guidance should ASIC give on this issue? B2Q5 Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online? B2Q6 Do you think we should restrict the use of hyperlinks in notifications? B2Q7 Please provide feedback on the costs to your business of: (a) developing or modifying an electronic facility; (b) printing and mailing disclosures (including, where possible, volumes and expected changes in volumes based on the proposal); and (c) any savings you would expect to make were this proposal implemented. B2Q8 Please estimate any costs that consumers might be expected to incur as a result of this change.

Proposal	Your feedback
C1 We propose to facilitate more innovative PDSs, such as interactive PDSs, by giving relief: (a) from various provisions requiring a copy of a PDS to be given to a person on request and instead allowing a provider to give a copy of any current PDS for the relevant product or offer—meaning a provider can give a different printed PDS, even if technically it is not a 'copy'; (b) from the shorter PDS regime, provided the PDS communicates the same information that is required by that regime; and (c) from the requirements for certain language to be included on the cover or 'at or near the front of' a PDS so they can equally apply to a more innovative PDS.	C1Q1 Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS? C1Q2 Do you have any comments on the relief from the shorter PDS regime in proposal C1(b)? Do you have any other suggestions as to how this might be achieved? Do you think communicating 'the same information' is an appropriate limitation on a more innovative PDS? C1Q3 Do you think that our proposed requirement in proposal C1(c) that the mandated language be included 'at or near the front of the PDS' will accommodate more innovative PDSs? C1Q4 Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs? C1Q5 Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?
C2 We propose to update our guidance in RG 221 to: (a) make it clear that we think Pt 7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to be printed and an interactive version; (b) make it clear that the requirement that a consumer can identify the information that is part of the PDS is particularly important in the case of more innovative PDSs; and (c) include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form (see Section D of draft updated RG 221).	C2Q1 Do you agree with this proposal? Please give reasons. C2Q2 Do you consider that there are any other areas where a lack of clarity of our view would prevent or discourage you from producing a more innovative PDS? C2Q3 Are there any other risks to consumers that may be more apparent in the electronic environment? C2Q4 Do you think, where it does not already, any of our proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs? C2Q5 Do you agree with our updated good practice guidance in Section D of draft updated RG 221? C2Q6 Do you think complying with our updated good practice guidance would be too onerous? C2Q7 Is there anything else you think would be usefully covered in our good practice guidance?

Proposal	Your feedback
D1 We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.	D1Q1 Do you agree we should align the treatment of financial services disclosures and credit disclosures? Please give reasons for your answer. D1Q2 Have you encountered barriers to the electronic provision of credit disclosures? If so, what are those barriers? D1Q3 Please estimate any compliance cost savings you would expect to realise if provisions for credit disclosures were aligned with our proposals for financial services disclosures.