

ABA Member Feedback on Term Deposit Class Order 14/1262 Consultation.

1. Further Consultation Requested

The ABA requests ASIC release a draft of the revised Class Order for further consultation / review by members before implementation.

This is considered important as drafting will need to clearly define the updated requirements and any supporting processes required for members to estimate the implementation impact (including Prudential Standard APS 210).

Once the requirements and implementation impact have been determined, the ABA requests ASIC provide members with a suitable timeframe to implement any changes needed for compliance, as it will also impact third-party arrangements.

2. Proposal for Combined Pre / Post Maturity Notice - Considerations

The ABA appreciates ASIC's efforts to address member feedback on the challenges with complying with the Class Order timeframes, and the proposed alternative of providing a combined pre / post-maturity notice.

Consideration should be given to the following points for this proposal:

- Where it is not possible for a bank to state the applicable interest rate before maturity (considered a common scenario), considering how customers could be advised of the applicable interest rate without the bank also being required to send a post-maturity notice.

This could include making the applicable rate available via the bank's website, electronic communication (including via internet banking) or customers contacting a bank's call centre or branch.

Without limiting the flexibility for banks to determine the options available, the instrument should make it clear that banks may employ various options in complying with the Class Order.

- Accordingly, ASIC should consider removing the requirement of 7AC(c)(iii) entirely, or considering it satisfied by other means such as those listed above or, information already contained in pre-maturity notices to inform customers on how and when they can find out the interest rate for the new product if it is not known at the time of the notice.
- The Class Order should also extend the flexibility of current clause 7AC(b) such that a bank may roll over a term deposit in accordance with a customer's consent.

Further support for this position is that in many instances a banks terms and conditions agreed to by customers will contain the ability for banks to roll over term deposits without receiving additional consent before maturity.

Any need for additional correspondence beyond a combined pre / post maturity notice where “consent” instructions are received so close to maturity would appear to offer little customer benefit, and repeats the current challenge of providing confirmation within 1 business day.

- Banks should also be able to include advice in the pre-maturity notice that if customers experience a postal delay and miss the opportunity to amend the maturity instruction before the end of the grace period, the customer should contact the bank to discuss their options.
- Delivery of any combined pre / post maturity notice must be flexible to include the option for digital delivery etc. In this respect, notice methods such as those in the upcoming 2025 Banking Code clause 38 (e.g. app notifications) should be considered.

3. **Alignment with Corporations Act**

- The Best Interest Duty (BID) requirements in 961B of the Corporations Act do not apply to ‘basic banking products’ as they are not a relevant financial product (see also [RG175](#)).
- The term “basic banking product” in section 961F includes “basic deposit products”. The term “basic deposit product” is defined in section 9 of the Corporations Act. It does not extend to term deposits.
- A term deposit is allowed to be considered a “basic deposit product” by virtue of the Class Order. This allows, amongst other things, that a term deposit can be sold in a similar manner to a bank account (e.g. without the need for a PDS).

Section 4 of the Class Order achieves this by modifying the definition of “basic deposit product”. However, the amended definition only applies to “affected term deposits” (extract below):

4. Parts 7.6 (other than Divisions 4 and 8), 7.7, 7.8A and 7.9 of the Act apply **in relation to an affected term deposit** as if the definition of *basic deposit product* in section 9 of the Act were modified or varied as follows:
 - (a) omit paragraph (c), substitute:

“(c) both of the following are satisfied:

 - (i) there is a minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor;
 - (ii) that period expires on or before the end of the period of 5 years starting on the day on which funds were first deposited in the facility; and”;
 - (b) omit paragraph (d), substitute:

“(d) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor:

 - (i) without any prior notice to the ADI that makes the facility available; or
 - (ii) subject to a prior notice requirement that does not exceed a period of 31 days from the first business day after the notice is given, whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor; and”.
- The term “affected term deposit” is defined in section 6(b) of the Class Order and, in so far as it relates to section 9 of the Corporations Act, are term deposits less than 2 years in length (extract below)

6. In this instrument:

affected term deposit means a deposit product that is a facility in relation to which:

- (a) the conditions in paragraphs (a), (b) and (e) and subparagraph (c)(ii) of the definition of *basic deposit product* in section 9 of the Act (ignoring any modifications or variations to the definition notionally made by this instrument) are satisfied; and
- (b) if the period referred to in subparagraph (c)(ii) of the definition of *basic deposit product* in section 9 of the Act (ignoring any modifications or variations to the definition notionally made by this instrument) expires after the end of the period of 2 years starting on the day on which funds were first deposited in the facility—the condition in paragraph (d) of that definition is not satisfied; and
- (c) funds were first deposited into the facility either:

- The result of this is that only term deposits of 2 years or less in length fall within the definition of “basic banking products” for the purpose of section 961F of the Corporations Act. Term deposits with terms greater than 2 years attract the BID.
- Therefore, the Class Order should be amended to ensure consistency with the Corporations Act such that all term deposits of 5 years or less are exempt from the BID (i.e. consistent with other “basic deposit products”).

4. Other Considerations

- Regardless of the proposed pre / post maturity notice solution, the Class Order should be remade to update the language of 7AC(c) to require banks to *send* rather than *give* a notice to the depositor where a customer has not opted into receiving electronic communications.

This should be accompanied with a clear indication that s29 of the *Acts Interpretation Act 1901* (Cth) will not apply to s7AC(c) requirements.