



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 169

# Term deposits that are only breakable on 31 days' notice: Proposals for relief

November 2011

## About this paper

This consultation paper sets out ASIC's proposals for relief to enable authorised deposit-taking institutions (ADIs) to issue term deposits of up to two years that can only be broken on 31 days' notice, while being subject to the same regulatory requirements as 'basic deposit products' in the *Corporations Act 2001* (Corporations Act).

The purpose of this paper is to seek the views of ADIs, investors, consumer groups and other interested parties on our proposals.

### 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 4 November 2011 and is based on the Corporations Act as at that date.

### 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 are keen 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 term deposits that are only breakable on 31 days' notice. 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](#), p. 20.

### Making a submission

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

Comments should be sent by 23 December 2011 to:

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### What will happen next?

<b>Stage 1</b>	4 November 2011	ASIC consultation paper released
<b>Stage 2</b>	23 December 2011	Comments due on the consultation paper
	January 2012– February 2012	Drafting of class order (if any)
<b>Stage 3</b>	March 2012	Release of class order (if any)

## A Background to our proposals

### Key points

ASIC is responsible for licensing ADIs and monitoring their compliance with conduct and disclosure obligations under the Corporations Act and the ASIC Act.

As 'basic deposit products', term deposits are a Tier 2 product for the purposes of training requirements under Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146) and are subject to lower disclosure requirements.

The Basel III liquidity standards have the goal of promoting a more resilient banking sector, including improving the sector's ability to absorb shocks arising from financial and economic stress.

Term deposits that are only breakable on 31 days' notice would achieve recognition of the 31-day term under the Basel III liquidity standards.

Relief may be required due to potentially significant regulatory uncertainty about whether term deposits that are only breakable on 31 days' notice can qualify as basic deposit products under the Corporations Act.

### The regulatory environment

- 1 In Australia, only authorised deposit-taking institutions (ADIs) such as banks, credit unions and building societies can issue term deposits.<sup>1</sup>
- 2 The Australian Prudential Regulation Authority (APRA) is the prudential regulator of the Australian financial services industry. APRA establishes and enforces prudential standards, which ADIs are required to comply with. APRA is also responsible for authorising ADIs to provide banking services (including taking deposits) under the *Banking Act 1959* (Banking Act).
- 3 ADIs are also regulated by ASIC. Under the *Corporations Act 2001* (Corporations Act), deposit-taking facilities made available by ADIs are specifically defined as financial products.<sup>2</sup>
- 4 As part of our role as a regulator of the financial services industry, we are responsible for licensing and monitoring financial services businesses (including ADIs) to ensure that they operate efficiently, honestly and fairly, and comply with the obligations prescribed by the Corporations Act, including obligations for conduct and disclosure.

<sup>1</sup> Only ADIs that are authorised by APRA can carry on 'banking business' (as defined in s5 of the Banking Act), including taking money on deposit.

<sup>2</sup> 'Deposit product' is defined in s764A(1)(i) of the Corporations Act.

- 5 ASIC also has a consumer protection role under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Part 2, Div 2 of the ASIC Act covers broad standards of conduct, including prohibitions on misleading representations (s12DB), unconscionable conduct (s12CA) and misleading or deceptive conduct (s12DA) in relation to financial products, including deposit products.
- 6 The Code of Banking Practice (Banking Code) and the Mutual Banking Code of Practice (Mutual Code) are voluntary codes of conduct for the banking industry, and credit unions and building societies, respectively. They include requirements that subscribers must comply with, such as providing terms and conditions on request, the consequences of early withdrawals (cl 10.4(f) of the Banking Code), and ensuring that advertising is not misleading or deceptive (Principle 3, Part C and Sections 1–3, Part D of the Mutual Code).

## Basic deposit products

- 7 For a deposit product to qualify as a ‘basic deposit product’, it must satisfy a series of conditions set out in the definition in s761A of the Corporations Act.
- 8 A term deposit of up to five years may qualify as a basic deposit product if early withdrawal by the depositor is permitted (i.e. it is breakable). A depositor may make a withdrawal without prior notice to the ADI, except that:
- (a) an ADI may require prior notice for withdrawal from a term deposit of up to two years in length;
  - (b) for credit unions, credit societies, credit co-operatives and building societies (mutuals), a notice requirement of seven days or less<sup>3</sup> may be required; and
  - (c) the ADI may impose a reduction in the return generated for the depositor.
- 9 Beyond the special provision for mutuals (see paragraph 8(b)), the Corporations Act does not specify the period of notice that an ADI may require a depositor to give for an early withdrawal from deposits of up to two years.
- 10 Basic deposit products are classified as Tier 2 products for training purposes in ASIC’s Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).<sup>4</sup> Persons providing advice only on basic deposit products can meet the training standards by completing a training course that is not on the ASIC Training Register, but has instead been assessed as meeting the training standards by their Australian financial services (AFS) licensee. This enables a larger range of staff to advise on these products. By comparison, advising on Tier 1 products requires a higher knowledge and skill

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<sup>3</sup> See reg 7.1.03A(2) of the Corporations Regulations 2001 (Corporations Regulations).

<sup>4</sup> See RG 146.41.

requirement at the Tier 1 diploma education level. The rationale for classifying basic deposit products as Tier 2 products in RG 146 is because they are relatively straightforward and well understood by the public.

- 11 Since December 2005, basic deposit products have been excluded from the Product Disclosure Statement (PDS) regime, as long as the cost of the product and any future payment requirements are disclosed to the client.<sup>5</sup> This means that, in a recommendation, issue or sale situation, term deposits that satisfy the definition of basic deposit product are exempted from the requirement to give a client a PDS.
- 12 Basic deposit products are also exempted from the requirement to give a client a Statement of Advice (SOA) under the Corporations Act.<sup>6</sup> This means that advisers are not required to give clients an SOA when providing personal advice that relates only to basic deposit products.

## Product features of term deposits

- 13 Term deposits pay a fixed rate of interest for a fixed period. Term deposits are typically available for periods of between one month and five years, in 30-day increments.
- 14 Funds deposited into a term deposit are not available at call, but a term deposit can typically be broken at the request of the investor. An investor who breaks a term deposit may have the return on their term deposit reduced, and may be charged a prepayment fee.
- 15 When the fixed period of a term deposit is due to end at maturity, the investor has a number of options:
- (a) withdraw the deposited funds (and accumulated interest);
  - (b) allow the term deposit to automatically roll over into a new term deposit for the same term and for the interest rate applicable for that term on the date of rollover; or
  - (c) re-invest the funds and/or interest into a new term deposit for a different term.
- 16 As noted earlier, term deposits that fall within the basic deposit product exemption are exempted from the PDS requirements of the Corporations Act. This means that ADIs are not required to give clients a PDS for term deposits, but can choose to do so.
- 17 In the place of PDSs, ADIs tend to use 'terms and conditions' documents to record the contractual terms that apply to the term deposit.

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<sup>5</sup> See reg 7.9.07FA of the Corporations Regulations.

<sup>6</sup> See s946B(5)(a) of the Corporations Act.

## Basel III reforms

- 18 The Basel Committee on Banking Supervision (BCBS) released its Basel III reform package in December 2010 (Basel III reforms). The Basel III reforms are a set of reform measures developed by the BCBS to strengthen the regulation, supervision and risk management of the banking sector globally.<sup>7</sup> These measures aim to:
- (a) improve the banking sector's ability to absorb shocks arising from financial and economic stress;
  - (b) improve risk management and governance; and
  - (c) strengthen banks' transparency and disclosures.
- 19 The Basel III reforms were developed in response to the global financial crisis and incorporate new global standards for liquidity risk, *Basel III: International framework for liquidity risk measurement, standards and monitoring* (Basel III liquidity standards).
- 20 APRA has indicated that as a member of the BCBS, it supports the Basel III reforms and the goal of promoting a more resilient banking system. APRA has commenced consultation on the Australian implementation of the Basel III reforms, and this will continue into 2012.<sup>8</sup>
- 21 The Basel III liquidity standards require banks to make allowance for a wide range of potential cash outflows, including potential deposit outflows. Deposits that are on demand, or can be withdrawn with little notice, are assumed to have a greater potential for outflow.
- 22 For retail term deposits to achieve recognition of their term, and therefore lower potential outflow, a necessary condition is that the depositor has no legal right to withdraw the deposit within a 30-day period, that is:
- the depositor has no legal right to withdraw deposits within the 30 day horizon of the Liquidity Coverage Ratio (LCR), or if early withdrawal results in a significant penalty that is materially greater than the loss of interest.<sup>9</sup>
- 23 If an ADI allows early withdrawal, all of that ADI's term deposits will be treated as 'demand deposits' (i.e. regardless of the remaining term, the deposits would be treated as being 'at call').<sup>10</sup>
- 24 The Basel III liquidity standards allow the prudential supervisor to choose to outline exceptional circumstances (such as consumer hardship) under which a term deposit could be withdrawn by a depositor without changing the treatment of the ADI's remaining term deposits.

<sup>7</sup> <http://www.bis.org/bcbs/basel3.htm>

<sup>8</sup> Letter to ADIs from APRA, 17 December 2010.

<sup>9</sup> Basel III liquidity standards, paragraph 62.

<sup>10</sup> Basel III liquidity standards, paragraph 63.



## The need for relief

- 25 The long-standing practice among ADIs is to allow term deposits to be breakable at the depositor's discretion (whether or not subject to some loss of interest). If this practice is maintained, ADIs to whom the LCR requirements apply will need to hold a larger liquidity buffer under the Basel III liquidity standards. This is likely to result in a reduction of term deposit rates offered by ADIs due to the need to recoup the associated costs of holding a larger liquidity buffer.
- 26 To meet the Basel III liquidity standards, a depositor must have no legal right to withdraw deposits within the 30-day horizon of the LCR (subject to the hardship exemption). Therefore, term deposits that require a minimum notice period of 31 days before being able to be withdrawn by the depositor will achieve recognition of their term for LCR purposes.
- 27 The definition of basic deposit product under s761A of the Corporations Act does not specify the period of notice that an ADI may require a depositor to give for an early withdrawal from a term deposit of up to two years (except for the special provision for mutuals). There has been no judicial consideration of the period of notice that an ADI may require for withdrawal from these term deposits.
- 28 We consider that it is unclear whether, if an ADI imposed a notice requirement of 31 days for early withdrawal of term deposits, this would enable term deposits to satisfy the definition of basic deposit product. Given that a minimum notice period of 31 days would be required for term deposits of up to two years to gain recognition for LCR purposes, there is significant regulatory uncertainty about whether such term deposits would qualify as basic deposit products without some form of relief provided by ASIC.
- 29 Without relief, term deposits that are only breakable on 31 days' notice could fall outside the definition of basic deposit product and therefore be Tier 1 products for the purpose of training requirements in accordance with RG 146. This would mean that persons advising on term deposits would be required to meet a higher knowledge and skill requirement at the Tier 1 diploma education level.
- 30 This could have significant implications for ADIs, because frontline staff would be unable to sell term deposits unless they meet the higher Tier 1 training standards. It could lead to higher compliance costs for ADIs if they had to meet higher training requirements for all bank staff dealing with term deposits, as well as ongoing monitoring and competency requirements.
- 31 In addition, without relief, in a recommendation, issue or sale situation, ADIs may be required to give clients a PDS for term deposits that are only breakable on 31 days' notice. ADIs may also be required to give a client an SOA when providing personal advice on such term deposits.
- 32 We think that potentially significant regulatory uncertainty would be removed if we provided relief to clarify the classification of term deposits of up to two years that are only breakable on 31 days' notice.

## B Our proposals

### Key points

We are considering whether it would be appropriate to give class order relief so that term deposits of up to two years that can only be broken on up to 31 days' notice would be subject to the same regulatory requirements as basic deposit products.

We are also considering whether the relief should be conditional on ADIs implementing one or more of the following possible conditions:

- using a new product name for these term deposits;
- providing a warning to consumers prior to the issue of the product;
- making pre-maturity contact, to either obtain express consent to rollover, or provide a pre-maturity letter to the investor; and/or
- providing and disclosing a grace period on rollover and sending a post-maturity letter.

We are seeking feedback on these possible conditions of relief. Based on the feedback we receive, we will consider which of these conditions would be appropriate for the relief, and in doing so, how the proposed conditions would work together.

## Proposed relief

### Proposal

- B1** We propose to give conditional class order relief such that term deposits of up to two years that can only be broken on up to 31 days' notice would be subject to the same regulatory requirements as basic deposit products.

#### *Your feedback*

- B1Q1 Do you agree with this proposal? Please give reasons for your answer.
- B1Q2 Do you think that it would be appropriate to also provide relief so that term deposits of more than two years that can only be broken on up to 31 days' notice would be subject to the same regulatory requirements as basic deposit products?
- B1Q3 What are the consumer risks posed by term deposits that can only be broken on 31 days' notice?

## Rationale

- 33 Currently, without relief, there is regulatory uncertainty for ADIs that wish to issue term deposits of up to two years that are only breakable on 31 days' notice. This is because it would be unclear whether those term deposits satisfy the definition of basic deposit product. We consider that by providing relief, there would be a clear regulatory position on the requirements of those term deposits under the Corporations Act.
- 34 We consider that it may be appropriate to limit the scope of relief so that it only applies to term deposits of up to two years for the following reasons:
- (a) Term deposits of up to two years are likely to make up the vast majority of all term deposits for ADIs.
  - (b) It would be consistent with the Corporations Act's current distinction between term deposits of up to two years and term deposits of between two and five years in relation to whether ADIs can impose a notice requirement on early withdrawal and still have the product satisfy the definition of basic deposit product.

## Proposed conditions of relief

- 35 In developing the proposed conditions of relief, we have taken into account the consumer protection objectives of Ch 7 of the Corporations Act. This is because there is a potential risk that consumers may acquire a term deposit without being aware that it is only breakable on 31 days' notice.
- 36 The current practice among ADIs is to issue term deposits that are generally breakable by the depositor without notice. A change to the offering of term deposits such that they are only breakable on 31 days' notice would result in a departure from the current operation of a basic retail banking product that has been long understood by consumers.
- 37 We are seeking feedback on the following proposed conditions of relief, and based on the feedback we receive, we will consider which of the proposed conditions would be appropriate for the relief.
- 38 In considering these proposed conditions, we will also consider how they would work together. We do not necessarily propose to adopt all the conditions set out in this paper. We also seek feedback on which conditions might most work together effectively.

## New product name

### Proposal

- B2** We are considering whether the relief in proposal B1 should be subject to the condition that term deposits with a 31 days' notice requirement for early withdrawal use a new product name that is different to 'term deposit'.

#### *Your feedback*

- B2Q1 Do you agree with this proposal? Please give reasons for your answer.
- B2Q2 Are there any practical problems with the implementation of this proposal? Please give details.
- B2Q3 What are some possible new product names that could be used for term deposits that are only breakable on 31 days' notice?
- B2Q4 Should ASIC prescribe a specific product name for term deposits that are only breakable on 31 days' notice through our relief? If so, what should it be?

### Rationale

- 39 There is a possibility that there may be two different types of term deposits offered by ADIs in the future (the current form where the ADI does not require notice for early withdrawal, and term deposits that are breakable only on 31 days' notice). If both types of term deposits are offered in the retail deposits market with the same or very similar name (i.e. both are marketed as 'term deposits'), there is a potential risk that consumers will think that there is no practical difference between the two types of term deposits.
- 40 This could lead to consumers acquiring a term deposit without understanding that it is not breakable without prior notice. In particular, consumers who have long understood that term deposits are breakable at their discretion are likely to be at risk.
- 41 We consider that it may be appropriate for ADIs to use a new product name for term deposits that are only breakable on 31 days' notice, to make a clear distinction between the two types of term deposits. If the two types of term deposits are differentiated by name, this is likely to help consumers be aware that there are two distinct types of term deposits offered by ADIs. A new product name may be particularly helpful for consumers who have long understood that term deposits are breakable at their discretion so they understand that term deposits that are only breakable on 31 days' notice operate differently.

## Consumer warning

### Proposal

- B3** We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, consumers are given:
- (a) a warning about the notice requirement in writing and/or, if practicable, orally, prior to the issue of the product; and
  - (b) information about other deposit products that permit early withdrawal without prior notice.

#### *Your feedback*

- B3Q1 Do you agree with this proposal? Please give reasons for your answer.
- B3Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.
- B3Q3 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.
- B3Q4 Do you agree that consumers should be provided with information about other deposit products that permit early withdrawal without prior notice? Please give reasons for your answer.

### Rationale

- 42 We consider that because term deposits have for many years been breakable without notice, ADIs should provide a clear warning about the notice period (for term deposits that are only breakable on 31 days' notice) when the consumer applies for the product.
- 43 Although we expect that ADIs will disclose the requirement for 31 days' notice in their PDSs or terms and conditions, we consider that it may be appropriate that an additional warning be provided:
- (a) in the application form for the term deposit; and/or
  - (b) orally where practicable (e.g. when the investor is applying for a term deposit in a branch or over the telephone).

## Investor's express consent to rollover

### Proposal

- B4** We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs obtain the investor's express consent to rollover their term deposit at maturity.

#### *Your feedback*

- B4Q1 Do you agree with this proposal? Please give reasons for your answer.
- B4Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.
- B4Q3 What would be an appropriate way for ADIs to obtain the express consent of the investor (e.g. by contacting the investor by telephone, by sending a written request form or by electronic means such as online portals or mobile text message)? Please give details.
- B4Q4 When would be an appropriate time to obtain the express consent of the investor? For example, would within 30 days before the end of the term be an appropriate time to obtain express consent?
- B4Q5 What type of disclosure or information should be provided to the investor when a request is made to obtain their express consent (e.g. the indicative or actual interest rate that will apply to a new term deposit after rollover)?
- B4Q6 What should the outcome at maturity be if the investor does not respond to a request by the ADI for their express consent prior to maturity? For example, should the term deposit funds be automatically transferred into an at-call account?
- B4Q7 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.
- B4Q8 Would this proposal benefit consumers? Please give reasons for your answer.

### Rationale

- 44 In March 2010, we released a report, *Review of term deposits* (REP 185), which reviewed ADI practices relating to the marketing and disclosure of term deposits. Our review found that ADIs structure their term deposits so that, unless otherwise instructed by the investor, a maturing term deposit rolls over into a new term deposit for the same term and for the interest rate that applies to that term on the date of rollover.
- 45 In REP 185, we also identified the widespread existence of dual pricing (i.e. ADIs that offer both high and low interest rates on term deposits based on the term of investment, with significant differences between these rates).

- 46 Our review of term deposits found that because term deposits can rollover on a default basis (unless investors take active steps), the dual pricing of term deposit interest rates creates a risk that a term deposit could roll over automatically from a higher interest rate to a lower interest rate, without the investor being aware of the change. This means that retail investors could inadvertently roll over into and remain in low-interest-rate term deposits.
- 47 Given that a default rollover results in the issue of a new term deposit and the risk posed by dual pricing of investors rolling into a term deposit with significantly lower interest rates, we consider that it may be appropriate to make the relief subject to the condition that ADIs obtain the express consent of the investor to rollover their term deposit at maturity, where the investor has not given a specific instruction near the time of maturity about what they would like to happen when their term deposit matures.
- 48 If ADIs obtain the investor's express consent to rollover the term deposit, we consider that investors are more likely to consider the options available to them when their term deposits mature, and make informed decisions before rollover. This is very likely to reduce or eliminate the incidence of investors rolling into and remaining in low-interest-rate term deposits.
- 49 In addition, we consider the desirability of having investors provide express consent prior to a rollover is increased in circumstances where the new term deposit will only be breakable on 31 days' notice.

## Pre-maturity letter

### Proposal

- B5** As an alternative to proposal B4, we are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs send a pre-maturity letter to investors at least 14 days before maturity to disclose:
- (a) the actual or indicative interest rate that will apply to a new term deposit if the investor allows the maturing term deposit to automatically roll over into the new term deposit;
  - (b) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period;
  - (c) if the actual interest rate that will apply to the new term deposit at the date of rollover cannot be disclosed:
    - (i) a prominent warning that the investor should confirm the actual interest rate on the date of rollover; and
    - (ii) information on how the investor may ascertain the actual interest rate on the date of rollover; and
  - (d) the grace period that will apply when their term deposit rolls over by default (see proposal B6).

*Your feedback*

- B5Q1 Do you agree with this proposal? Please give reasons for your answer.
- B5Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.
- B5Q3 Would it be appropriate to send a pre-maturity letter at least 14 days before maturity? Please give reasons for your answer.
- B5Q4 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.
- B5Q5 Would this proposal benefit consumers? Please give reasons for your answer.
- B5Q6 Do you have a preference for the approach in proposal B4 or proposal B5? If so, please give details.

**Rationale**

- 50 As noted above, in REP 185 we identified that the dual pricing of term deposit interest rates creates a risk that retail investors could inadvertently rollover into and remain in low-interest-rate term deposits because term deposits can rollover automatically without the investor taking active steps.
- 51 Our review identified that it was common practice among ADIs to make pre-maturity contact by sending a letter to investors immediately before the term deposit matures (pre-maturity letter).
- 52 Pre-maturity letters generally advise investors that they may withdraw or reinvest the maturing balance. Investors are also informed that, if they do not take action, the term deposit will roll over for the same term at the interest rate applicable for that term on the date of rollover.
- 53 We consider it important that investors are aware of the indicative or actual interest rate that will apply on their new term deposit before rollover, so that they have sufficient time to take action if they wish. We also consider it important for investors (especially for those that will roll over automatically to a low interest rate) to be aware of better interest rates that are available from the same ADI for a term deposit of a comparable period.
- 54 By disclosing what the actual or indicative interest rate will be on rollover and provide a prominent warning about the highest interest rate offered for a term deposit of comparable period in the pre-maturity letter, investors are more likely to take action and make an informed decision about the most appropriate term before their term deposit rolls over.
- 55 In relation to the provision of a warning about the highest interest rates available for a term deposit of comparable period in the pre-maturity letter, we consider that this warning should be made prominently in a relatively larger font size and in bold text. This would assist to bring the warning to the attention of investors when they are reading the letter.



- 56 There is a risk that the indicative interest rate disclosed in the pre-maturity letter may not be the actual interest rate that applies on the date of rollover, because the ADI has changed its interest rates in the period between the date of the pre-maturity letter and the date of rollover. We consider that this risk would be reduced if investors are told to confirm the actual interest rate on the date of rollover, and are given information on how to ascertain the actual interest.
- 57 In REP 185, we identified that it is industry best practice to inform investors about the grace period at every disclosure point, including pre-maturity letters. If investors are advised of the grace period in the pre-maturity letter, investors are more likely to be aware of the grace period prior to maturity, and take action as necessary.

## Grace period on rollover and post-maturity letter

### Proposal

- B6** We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs:
- (a) provide a grace period to investors of at least 14 days; and
  - (b) send a post-maturity letter to investors within a maximum of five days after maturity, to disclose:
    - (i) the grace period (i.e. a short period of time during which an investor can cancel the new term deposit or change to a different one without charge);
    - (ii) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period; and
    - (iii) a prominent warning about any reduction in the return generated and/or fees applicable for early withdrawal on 31 days' notice, outside the grace period.

#### *Your feedback*

- B6Q1 Do you agree with this proposal? Please give reasons for your answer.
- B6Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.
- B6Q3 Would it be appropriate to prescribe the grace period as a condition of our relief? Please give details.
- B6Q4 Would a grace period of at least 14 days be appropriate? If not, what would be an appropriate grace period be? Please give details, including figures and reasons.

B6Q5 Would it be appropriate to send a post-maturity letter within a maximum of five days after maturity? Please give reasons for your answer.

B6Q6 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.

### Rationale

58 As noted above, term deposit dual pricing and automatic rollovers mean that retail investors could inadvertently roll over into and remain in low-interest-rate term deposits.

59 We consider that investors' awareness of grace periods is particularly important when they acquire term deposits that are only breakable on 31 days' notice, because automatically rolling into a new term deposit which is only breakable on 31 days' notice poses a greater risk to these consumers than current term deposits (which can generally be broken without notice).

60 Our review of term deposits identified that, in the period immediately after a term deposit has rolled over, it was common for ADIs to provide investors with a grace period.

61 In REP 185, as part of our recommendations to address this 'dual pricing rollover risk', we identified that it is industry best practice to:

- (a) inform investors about grace periods at every disclosure point, including PDSs/terms and conditions documents, pre-maturity letters and post-maturity letters; and
- (b) provide investors with a grace period no shorter than five business days with industry best practice at 14 days.

62 We consider it important for investors to have, and be aware of, the grace period that applies when their term deposit rolls over by default. We also consider that the grace period should be of sufficient length to allow the investor to act.

63 Our review of term deposits found that it was common practice among ADIs to make post-maturity contact by sending investors a letter after a term deposit has rolled over into a new term deposit. This letter sets out the details of the new term deposit, including the interest rate that applies.

64 We consider that providing a grace period of at least 14 days and disclosing the existence of the grace period in a post-maturity letter would provide sufficient time and notice to assist investors to make and act upon an informed decision after their term deposit has rolled over.

65 Providing a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period in the post-maturity letter would assist investors to be aware of the higher interest rate that is available from the same ADI for a term deposit of a comparable period.

- 66 We consider that this proposal is likely to significantly reduce the incidence of investors rolling over into and remaining in low-interest-rate term deposits that are only breakable on 31 days' notice, because investors are more likely to be aware of the grace period and change their term deposit during the grace period.
- 67 For investors that inadvertently roll over into and remain in low-interest-rate term deposits that are only breakable on 31 days' notice, there is the additional risk of having the return on their term deposit reduced and/or fees imposed because of early withdrawal outside the grace period.
- 68 If investors are specifically advised in the post-maturity letter that they will be subject to a reduction in the return generated and/or fees for withdrawal outside the grace period, we consider that investors are more likely to make a withdrawal within the grace period, rather than outside the grace period, if they wish to withdraw their funds after rollover.

## C Regulatory and financial impact

69 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) consumer protection; and
- (b) cost to industry.

70 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).

71 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.

72 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with 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.

## Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Banking Act	<i>Banking Act 1959</i>
Basel III liquidity standards	New global standards for liquidity risk, <i>Basel III: International framework for liquidity risk measurement, standards and monitoring</i> , developed by the BCBS and released in December 2010
Basel III reforms	A set of reform measures developed by the BCBS to strengthen the regulation, supervision and risk management of the banking sector globally: see <a href="http://www.bis.org/bcbs/basel3.htm">http://www.bis.org/bcbs/basel3.htm</a>
basic deposit product	Has the meaning given in s761A of the Corporations Act
BCBS	Basel Committee on Banking Supervision
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
grace period	A short period of time during which an investor can cancel the new term deposit or change to a different one without charge
LCR	Liquidity Coverage Ratio
mutuals	Credit unions, credit societies, credit co-operatives and building societies
PDS	Product Disclosure Statement
post-maturity letter	A letter to investors after a term deposit has rolled over into a new term deposit
pre-maturity letter	A letter to investors immediately before the term deposit matures
reg 7.1.03A(2) (for example)	A regulation of the Corporations Regulations (in this example, numbered 7.1.03A(2))
REP 185	An ASIC report <i>Review of term deposits</i> released in March 2010

<b>Term</b>	<b>Meaning in this document</b>
RG 146	ASIC Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i>
s764A(1)(i) (for example)	A section of the Corporations Act (in this example, numbered 764A(1)(i))
Statement of Advice (SOA)	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.

## List of proposals and questions

Proposal	Your feedback
<p><b>B1</b> We propose to give conditional class order relief such that term deposits of up to two years that can only be broken on up to 31 days' notice would be subject to the same regulatory requirements as basic deposit products.</p>	<p>B1Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B1Q2 Do you think that it would be appropriate to also provide relief so that term deposits of more than two years that can only be broken on up to 31 days' notice be subject to the same regulatory requirements as basic deposit products?</p> <p>B1Q3 What are the consumer risks posed by term deposits that can only be broken on 31 days' notice?</p>
<p><b>B2</b> We are considering whether the relief in proposal B1 should be subject to the condition that term deposits with a 31 days' notice requirement for early withdrawal use a new product name that is different to 'term deposit'.</p>	<p>B2Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B2Q2 Are there any practical problems with the implementation of this proposal? Please give details.</p> <p>B2Q3 What are some possible new product names that could be used for term deposits that are only breakable on 31 days' notice?</p> <p>B2Q4 Should ASIC prescribe a specific product name for term deposits that are only breakable on 31 days' notice through our relief? If so, what should it be?</p>
<p><b>B3</b> We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, consumers are given:</p> <p>(a) a warning about the notice requirement in writing and/or, if practicable, orally, prior to the issue of the product; and</p> <p>(b) information about other deposit products that permit early withdrawal without prior notice.</p>	<p>B3Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B3Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.</p> <p>B3Q3 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.</p> <p>B3Q4 Do you agree that consumers should be provided with information about other deposit products that permit early withdrawal without prior notice? Please give reasons for your answer.</p>
<p><b>B4</b> We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs obtain the investor's express consent to rollover their term deposit at maturity.</p>	<p>B4Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B4Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.</p> <p>B4Q3 What would be an appropriate way for ADIs to obtain the express consent of the investor (e.g. by contacting the investor by telephone, by sending a written request form or by electronic means such as online portals or mobile text message)? Please give details.</p>

Proposal	Your feedback
	<p>B4Q4 When would be an appropriate time to obtain the express consent of the investor? For example, would within 30 days before the end of the term be an appropriate time to obtain express consent?</p> <p>B4Q5 What type of disclosure or information should be provided to the investor when a request is made to obtain their express consent (e.g. the indicative or actual interest rate that will apply to a new term deposit after rollover)?</p> <p>B4Q6 What should the outcome at maturity be if the investor does not respond to a request by the ADI for their express consent prior to maturity? For example, should the term deposit funds be automatically transferred into an at-call account?</p> <p>B4Q7 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.</p> <p>B4Q8 Would this proposal benefit consumers? Please give reasons for your answer.</p>
<p><b>B5</b> As an alternative to proposal B4, we are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs send a pre-maturity letter to investors at least 14 days before maturity to disclose:</p> <p>(a) the actual or indicative interest rate that will apply to a new term deposit if the investor allows the maturing term deposit to automatically roll over into the new term deposit;</p> <p>(b) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period;</p> <p>(c) if the actual interest rate that will apply to the new term deposit at the date of rollover cannot be disclosed:</p> <p>(i) a prominent warning that the investor should confirm the actual interest rate on the date of rollover; and</p> <p>(ii) information on how the investor may ascertain the actual interest rate on the date of rollover; and</p> <p>(d) the grace period that will apply when their term deposit rolls over by default (see proposal B6).</p>	<p>B5Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B5Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.</p> <p>B5Q3 Would it be appropriate to send a pre-maturity letter at least 14 days before maturity? Please give reasons for your answer.</p> <p>B5Q4 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.</p> <p>B5Q5 Would this proposal benefit consumers? Please give reasons for your answer.</p> <p>B5Q6 Do you have a preference for the approach in proposal B4 or proposal B5? If so, please give details.</p>



Proposal	Your feedback
<p><b>B6</b> We are considering whether the relief in proposal B1 should be subject to the condition that, for term deposits with a 31 days' notice requirement for early withdrawal, ADIs:</p> <p>(a) provide a grace period to investors of at least 14 days; and</p> <p>(b) send a post-maturity letter to investors within a maximum of five days after maturity, to disclose:</p> <p>(i) the grace period (i.e. a short period of time during which an investor can cancel the new term deposit or change to a different one without charge);</p> <p>(ii) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period; and</p> <p>(iii) a prominent warning about any reduction in the return generated and/or fees applicable for early withdrawal on 31 days' notice, outside the grace period.</p>	<p>B6Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B6Q2 Would this proposal result in practical problems or additional compliance costs? Please give details, including figures and reasons.</p> <p>B6Q3 Would it be appropriate to prescribe the grace period as a condition of our relief? Please give details.</p> <p>B6Q4 Would a grace period of at least 14 days be appropriate? If not, what would be an appropriate grace period be? Please give details, including figures and reasons.</p> <p>B6Q5 Would it be appropriate to send a post-maturity letter within a maximum of five days after maturity? Please give reasons for your answer.</p> <p>B6Q6 Do you think there is an alternative approach that would be more appropriate for the protection of investors? Please give details.</p>