



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 12

Electronic applications for life insurance and superannuation products

October 2000

Your comments

We invite your comments on the *proposals and issues for consideration* in this paper.

Comments are due by 16 November 2000 and should be sent to:

Angela Longo
Project team
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 5179 AA
Melbourne 3000
Fax - 03 9280 3339

E-mail: angela.longo@asic.gov.au

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

What this policy proposal is about

This policy proposal paper sets out the relief we are prepared to give to life companies and superannuation trustees (issuers) so they can accept electronic applications for their products.

Relief is needed because some current requirements relating to application forms, such as the signature requirement¹, can only be met by paper and not electronic applications.

The policy proposals cover:

- (a) direct distribution of life and superannuation products using electronic applications;

see Section A

- (b) electronic distribution involving intermediaries; and

see Section B

- (c) distribution through mixed-media.

see Section C

These proposals are an extension of the policy we already apply to electronic applications for securities under Policy Statement 150 *Electronic applications and dealer personalised applications* [PS 150]. They are designed to remove barriers to e-commerce without reducing customer protection. Although the *Electronic Transactions Act 1999* does not yet apply to the transactions covered by these proposals, the proposals are consistent with the requirements in that Act.

We will also expect issuers and other intermediaries to adhere to the best practice model for e-commerce developed by the government when using electronic means to communicate with their customers.

¹For life insurance companies, refer to G.I.1 “Disclosure Requirements for Promotional Material in the Life Insurance Industry” (G.I.1).

For superannuation trustees, refer to the determination issued under section 153 of the SIS Act “Applications for ‘single premium’ superannuation interests” (the SIS determination).

Contents

What this policy proposal is about	3
Our policy proposal — issues for consideration	5
A Direct distribution using electronic applications	
Why do issuers need relief?	5
When will ASIC give relief to enable electronic applications?.....	6
How should the identity of a customer be established?	7
How should the customer’s responsibility for the personal information be established?	8
How should customers be given the full benefit of product disclosure?	9
How should customers be alerted to their rights and obligations?	11
How should the safety and integrity of electronic information be safeguarded?.....	13
How should any pressure selling risk be minimised?	14
How should electronic documents be lodged with us?	15
What are the record keeping obligations?.....	16
Interim relief	16
Existing relief	16
B Electronic distribution involving intermediaries	
How should this policy apply to electronic distribution involving intermediaries?	18
C Mixed-media distribution	
How should this policy apply to mixed-media distribution?	21
Explanation	
A Direct distribution using electronic application forms.....	23
B Electronic distribution involving intermediaries	30
C Mixed-media distribution	31
Regulation impact statement.....	32
Key terms.....	37
What will happen next?.....	38

Our policy proposal — issues for consideration

A Direct distribution using electronic applications

Policy proposal	Issues for consideration
<p>Why do issuers need relief?</p> <ol style="list-style-type: none">1 Life insurance companies and superannuation trustees (“issuers”) are not generally able to accept electronic applications from potential policy owners or members (“customers”) for their products because some of the current requirements are designed for paper-based applications.2 The relevant requirements for life insurance companies are in G.I.1. The SIS determination contains the relevant requirements for superannuation trustees.3 The requirements in G.I.1 that may prevent electronic applications are that the application form must:<ol style="list-style-type: none">(a) be signed by the customer (clause 6.2); and(b) include written acknowledgements from the customer that they:<ol style="list-style-type: none">(i) have received the relevant product disclosure document (clause 6.7(b));(ii) have or have not received any advice (clause 6.11); and(iii) are making the decision to purchase the product on the basis	<ol style="list-style-type: none">3 Are there other requirements in G.I.1 that may prevent issuers from receiving electronic applications? If so, what are they?

Policy proposal

of information in the product disclosure document (clause 6.15).

- 4 The requirements in the SIS determination that may prevent electronic applications are that the application form must:
- (a) be attached at the end of a Key Features Statement (KFS) or other document permitted to be attached to the KFS (clauses 7 and 14);
 - (b) be printed on paper (clause 142);
 - (c) include a warning to the customer that before signing the application the trustee or financial adviser is obliged to give the customer a KFS (clause 144);
 - (d) include a written acknowledgement from the customer that they have received a separate investment strategies document or documents which is not attached to the KFS (clause 146); and
 - (e) have a permanent sticker placed on it which identifies minor changes to the KFS (clause 147).

When will ASIC give relief to enable electronic applications?

- 5 We propose to give relief from the paper based application form requirements in G.I.1 and the SIS determination where each of the following requirements are met:
- (a) issuers use adequate alternative means to establish:
 - (i) the identity of the customers using electronic applications; and
 - (ii) the customer's acceptance of responsibility for the information included in the electronic application; and

Issues for consideration

- 4 Are there other requirements in the SIS determination that may prevent issuers from receiving electronic applications? If so, what are they?

- 5A Are there other risks or considerations that we should take into account when allowing issuers to accept electronic applications? If so, what are they and why should they be considered?

- 5B What are the costs and benefits resulting from issuers being able to accept electronic applications? Can they be quantified?

Policy proposal

application; and

- (b) customers using electronic applications:
 - (i) have the full benefit of the relevant product disclosure documents (eg Customer Information Brochure (CIB) or a KFS);
 - (ii) receive effective warnings about their rights and obligations when applying for a product;
 - (iii) face low risks in relation to the safety and integrity of the electronic information; and
 - (iv) are not subject to any pressure selling.

We expect these proposals to apply to different methods of electronic distribution, including the use of internet and computer software.

We also seek public comments on cost/benefits resulting from electronic distribution of life insurance and superannuation products.

How should the identity of a customer be established?

- 6** We expect issuers to use reasonably adequate means to establish the identity of customers using electronic applications before issuing products to them.

Issues for consideration

- 5C** What benefits can customers derive by being able to make electronic applications? Can they be quantified?

- 6A** Should ASIC prescribe the means by which an issuer should establish the identity of customers using electronic applications?

- 6B** If so, how should ASIC determine what methods are best suited for this purpose?

- 6C** As an alternative, should the industry itself develop best practice standards to establish the identity of customers using

Policy proposal

Issues for consideration

- 7 An issuer can establish the identity of a customer using an electronic application form by a variety of methods. These include digital signatures/certification, personal identification numbers, pass words, details included in the application form, credit card details and some forms of e-mail addresses.
- 8 We do not propose to prescribe any specific methods or technology that issuers should use for this purpose because:
- (a) the available technology is rapidly and constantly evolving, and
 - (b) issuers are better placed to decide what technology they should use depending on considerations such as costs and customer needs.

How should the customer's responsibility for their personal information be established?

- 9 A written signature by the customer generally signifies their acceptance of responsibility for the personal information they include in the application. This is particularly important if an application includes underwriting information that a customer must give to a life company under their duty of disclosure to the company (see the warning under clause 6.4 of G.I.1 about the customer's duty of disclosure).
- 10 Where a customer uses an electronic application, there are two potential risks in this regard. The customer may:

the identity of customers using electronic applications?

- 9 Are there other purposes served by the written signature requirement? If so, what are they and why are they relevant?
- 10 Are there other risks? If so, what are they?

Policy proposal

- (a) subsequently deny responsibility for the information included in the application; or
 - (b) not fully appreciate the importance of their duty of disclosure when including personal information.
- 11** To address the above risks, issuers should ensure that customers who use electronic applications acknowledge:
- (a) in the case of life products under G.I.1, the receipt of the warning under clause 6.4 about their duty of disclosure to the life company by pressing an electronic key/button before proceeding to complete the application form; and
 - (b) their acceptance of responsibility for the information included in the application by pressing another designated electronic key/button after including that information in the application.

How should customers be given the full benefit of product disclosure?

- 12** A key purpose of the application form requirements in G.I.1 and the SIS determination is to ensure that customers have the full benefit of the relevant product disclosure when making their purchasing decisions.
- 13** To achieve the above objective, we will require issuers to:
- (a) take reasonable steps to ensure that customers who are given access to electronic application forms are given access to the relevant product disclosure documents using the same electronic means and at the same time as the

Issues for consideration

- 11** Are these measures adequate to address the identified risks? If not, what are the appropriate measures?

- 13** Are there other requirements that can be used in this context? For example, should we require issuers to use technology capable of ensuring that customers can access electronic application forms only after scrolling through the relevant electronic product

Policy proposal

electronic application forms; and

- (b) fully comply with all the relevant disclosure requirements in G.I.1 or the SIS determination, other than those which are specifically varied.

Additional SIS requirements

- 14** Superannuation trustees have the discretion to attach the s157 document, which contains additional product disclosure information, at the back of the product disclosure document.
- 15** We will allow superannuation trustees who wish to attach the s157 document to electronic product disclosure documents to do so. However, they should:
 - (a) make the s157 document available to customers using the same electronic means and at the same time as the electronic product disclosure document and the application form; and
 - (b) clearly identify the s157 document as such.
- 16** The SIS determination requires SIS trustees to identify any minor changes to the product disclosure document by placing permanent stickers in the application form to highlight those changes.
- 17** We will allow superannuation trustees to make minor changes to the product disclosure document in accordance with the SIS determination without having to highlight the changes in the product disclosure document and the electronic application form. However, the application form must clearly show the publication date of the product disclosure document and the date/s of any updating.

Issues for consideration

relevant electronic product disclosure documents?

- 15** Are these requirements appropriate for the electronic distribution of a s157 document? If not, what are the appropriate requirements?
- 17** Are there better ways to deal with minor changes to the product disclosure document and the application form? If so, what are they?

Policy proposal

Issues for consideration

How should customers be alerted to their rights and obligations?

- 18** There are a number of requirements relating to applications that are designed to enhance the effectiveness of the product disclosure by alerting customers to their rights and obligations.
- 19** In the case of life products under G.I.1, an application form must include:
- (a) a clear warning to customers that they have a right to receive a current product disclosure document containing key information relating to the product and the importance of using that information to make a suitable purchasing decision (clause 6.10);
 - (b) if the product disclosure document was not attached to the application form, a signed acknowledgment from the customer that they have received a current product disclosure document (clause 6.7(d));
 - (c) a signed acknowledgment from the customer whether or not they have received any advice (clause 6.11); and
 - (d) a signed acknowledgment from the customer that they have made the purchasing decision based upon the information in the relevant product disclosure documents given to them (clause 6.15).
- 20** In the case of superannuation products issued under the SIS determination, an application form must include:
- (a) a clear warning to customers that the trustee or financial adviser is obliged to

Policy proposal

give the customer important information relating to the fund which will help them understand the product and whether it is appropriate for their needs (clause 144); and

- (b) if information about investment strategies is contained in a separate document or documents and was not attached to the KFS, a signed acknowledgment from the customer that they have received the separate document/s (clause 146).
- 21** It is possible that the above requirements may not be as effective in an electronic environment as in the paper based context because:
- (a) a customer's attention may not be clearly drawn to the content of the product disclosure document through the warnings given (eg under clause 6.10 of G.I.1 or clause 144 of the SIS determination); and
 - (b) a customer may not pay sufficient attention to what is being acknowledged when making their acknowledgments electronically as opposed to in writing.
- 22** To address the above risks, we will require issuers to use electronic means to ensure that:
- (a) customers can only proceed to complete an electronic application form after receiving the relevant warnings;
 - (b) customers make the following acknowledgments (where required) by pressing electronic keys/buttons which are placed with clear messages about what the customer is required to acknowledge, ie whether or not the

Issues for consideration

- 21** Are there other risks that arise in the use of electronic applications? If so, what are they and how should they be addressed?
- 22A** How should we ensure that warnings and acknowledgments are delivered in an effective manner?
- 22B** For example, should we prescribe the order in which electronic keys/buttons should be included in an application form? Are there other ways in which warnings and acknowledgments can be

Policy proposal

customer has:

- (i) been given access to a current product disclosure document (clause 6.7(b) of G.I.1);
 - (ii) received the warning required under clause 6.10 of G.I.1 or clause 144 of the SIS determination;
 - (iii) received advice, and understand they may risk making an unsuitable purchasing decision where they have not obtained advice (clause 6.11 (a) to (d) of G.I.1);
 - (iv) made their purchasing decision based on the product disclosure documents made available to them (clause 6.15 of G.I.1); and
 - (v) been given access to any separate investment strategies document/s, which are not attached to the product disclosure document (clause 146 of the SIS determination);
- (c) there are embedded links to the relevant product disclosure documents from the application form where references are made to the product disclosure documents in the warnings or acknowledgments (eg in the warnings required under clause 6.10 of G.I.1 or clause 144 of the SIS determination).

How should the safety and integrity of electronic information be safeguarded?

- 23** Safety and integrity of the information in both the product disclosure documents and

Issues for consideration

provided to customers to minimise the chances that they might fail to read or properly consider these messages?

- 22C** Alternatively, is this an area that is more suited for the industry to develop best practice standards?

Policy proposal

application forms are important for customer protection and evidentiary purposes.

- 24** Therefore, we will require issuers not to issue their products in response to an electronic application unless they are reasonably satisfied that:
- (a) the customer had access to a current product disclosure document containing all the relevant information the issuer is required to give to the customer before applying for the product; and
 - (b) the information included in the application by the customer is the same information that is received by the issuer.
- 25** Because the available technology is constantly and rapidly evolving, we do not propose to prescribe the electronic means that may be used by issuers to ensure the safety and integrity of the electronic information. This allows a greater degree of flexibility for issuers to use new technologies taking into account costs and customer needs.

How should any pressure selling risk be minimised?

- 26** Generally, if a customer uses electronic product disclosure documents and an application form to transact directly with an issuer (for example, if no life agents, brokers or other intermediaries are involved), there is limited scope for pressure selling.
- 27** There is some possibility that e-mails attaching product disclosure documents and application forms may be thrust upon customers (ie pushed) along with messages

Issues for consideration

- 24** Are there other requirements that should be imposed on issuers to ensure the safety and integrity of the electronic information? If so, what are they and why should they be used?
- 25A** Should we prescribe the means by which issuers should promote the safety and integrity of electronically transmitted information?
- 25B** Alternatively, is this an area which is more suited for the industry to develop best practice standards?

- 26** Have we identified the scope for any pressure selling correctly? If not, what are the other areas of risk?

Policy proposal

that may pressure customers to buy those products.

- 28** To minimise this risk, we will require any e-mailed material to customers to include clear messages that:
- (a) customers are not obliged to buy the product; and
 - (b) if customers wish to do so, they should only do so on the basis of the information in the relevant product disclosure documents.

How should electronic documents be lodged with us?

- 29** Under G.I.1, life companies are required to lodge the relevant product disclosure documents and application forms with ASIC. There is no requirement for lodgement of product disclosure documents and application forms under the SIS determination.
- 30** Where life companies wish to use electronic distribution of these documents, they should give us:
- (a) a complete and unaltered print-out of the electronic version of the relevant product disclosure documents and the application form;
 - (b) if the documents are made accessible from an internet site, the address of the site;
 - (c) if the documents are made available on any disk, tape, CD-ROM or other similar article, a copy of that article; and
 - (d) an electronic copy of the documents.

Issues for consideration

- 28** Are there other means by which pressure-selling risks may be addressed? If so, what are they and why should they be used?

- 30** Should we impose a similar requirement on superannuation trustees where they use electronic product disclosure documents and application forms?

Policy proposal

Issues for consideration

What record keeping obligations should apply?

31 We expect issuers making electronic distribution of their products to keep for seven years records adequate to demonstrate that they have complied with this relief.

31A Is this record keeping requirement appropriate? If not, what are the appropriate requirements?

31B How should the record keeping requirements apply in the case of renewal of policies using electronic means?

Interim relief

32 We have recently given interim relief to enable some life companies to undertake electronic distribution of their products. This relief is:

- (a) substantially based on the proposed conditions of relief in this paper; and
- (b) will be valid until 1 July 2001.

33 We may give interim relief on similar conditions to other issuers. See paragraph 35 of the explanations for how to apply for interim relief.

Existing relief

34 Some issuers may be using electronic means to distribute their promotional material within the guidelines in the Insurance and Superannuation Commission's (ISC) CEO letter and the Information Letter to Approved Trustees (No 15) both issued in October 1996 (ISC guidelines).

35 If any issuers are already accepting electronic application forms either under any understanding they have reached with the ISC or their interpretation of the relevant ISC guidelines, we do not wish to review such

35 Do issuers need any specific transitional arrangements at the time of adoption of the final policy? If so, what are they and why are they needed?

Policy proposal

guidelines, we do not wish to review such arrangements at this stage. However, they will need to comply with our final policy when adopted following public consultation on these proposals.

Issues for consideration

B Electronic distribution involving intermediaries

How should this policy apply to electronic distribution involving intermediaries?

- 36** Life agents, life brokers and persons acting on behalf of superannuation trustees (intermediaries) may wish to assist customers by:
- (a) bringing to their attention the internet sites from which product disclosure documents and applications can be accessed;
 - (b) making available to them any disk, tape, CD-ROM or other article containing electronically stored product disclosure documents and applications;
 - (c) sending e-mails to customers attaching product disclosure documents and applications;
 - (d) helping them to complete electronic applications;
 - (e) completing an electronic application on behalf of a customer under a power of attorney given by that customer.
- 37** We would like to ensure, where intermediaries are involved in the electronic distribution of life or superannuation products, that customers:
- (a) are not subject to any pressure selling;
 - (b) are fully aware of the role played by the intermediary; and
 - (c) have the full benefit of the requirements proposed under Section A.
- 38** Intermediaries undertaking any of the above activities should:
- 36** Are there other ways in which intermediaries may get involved in the electronic distribution of life and superannuation products? If so, what are they?
- 37** Have we identified the relevant issues and concerns that arise where intermediaries are involved in the electronic distribution of products? If not, what are they and how should they be addressed?
- 38A** Are there other requirements that should be imposed on

- (a) fully comply with their relevant legal obligations (for example, arising under G.I.I, the Life Code, the Insurance (Agents & Brokers) Act, the SIS Act or the Corporations Law);
 - (b) when completing an electronic application form on behalf of a customer:
 - (i) bring to the attention of the customer the warnings included in the application form (such as the warnings required under clauses 6.4 and 6.10 of G.I.1 and clause 144 of the SIS determination); and
 - (ii) ensure that the customer verifies the information included in the electronic application form before making any of the specified acknowledgments required: see under paragraph 22(b); and
 - (c) when using e-mails to forward relevant product disclosure documents and application forms to customers, fully comply with the requirements in paragraph 28.
- 39** Where issuers allow or expect intermediary involvement in the electronic distribution of their products, they should:
- (a) fully comply with their own obligations relating to those intermediaries (such as those arising under the Life Code);
 - (b) make provision in the electronic application form for the intermediary to specify whether they have fully complied with the requirements under this relief and other applicable laws; and
 - (c) not issue a life policy or an interest in a superannuation fund unless they are reasonably satisfied that the intermediary has fully complied with their obligations.
- intermediaries? If so, what are they and why should they be imposed?
- 38B** Are the requirements in paragraphs 38 (b) and (c) adequate to deal with the issues that may arise where an intermediary completes an electronic application form under a power of attorney? If not, how should such situations be dealt with?
- 38C** For example, should there be additional acknowledgments from the intermediary that they have (a) completed the application under a power of attorney and (b) fully complied with their legal obligations to the customer in doing so?
- 39** Are these requirements suitable for issuers where they expect or allow intermediaries to be involved in the distribution?

- 40** We have granted limited relief from the G.I.1 requirements to enable agent-assisted completion of part electronic applications for life products (see ASIC Information Release 00/013).
- 41** That relief is limited because there is a paper application form that substantially complies with the G.I.1 requirements including the customer's signature. The electronic part of the application contains underwriting information relating to the customer which is completed by the adviser either using information already available in the life company data base or the information the customer gives: see also Section C on mixed-media distribution.
- 42** We seek industry views about the continued need for this relief if the proposals for electronic and mixed-media distribution involving intermediaries set out in this paper are adopted.
- 42A** Are there any reasons to continue this relief in its current form?
- 42B** If so, should there be similar relief for superannuation products?

C Mixed-media distribution

How should this policy apply to mixed-media distribution?

- 43** Issuers may concurrently use electronic and paper based product disclosure documents and application forms when distributing their products (ie the use of mixed media). Although we do not intend to restrict their ability to do so, there may be some risks that arise in such a context.
- 44** If paper and electronic documents are available at the same time for applying for the same product customers may become confused by documents that are not similar (for example, by material that is not set out in the same order or format in both versions).
- 45** To address the above risk, we will require issuers using mixed media for the distribution of their products to ensure that any paper version of the documents used is substantially similar to the electronic version of the documents. We will allow any variations necessary to accommodate the electronic environment (eg hyper links etc).
- 46** We note that the requirement that customers should be given access to electronic applications and product disclosure documents at the same time and by the same means will not generally allow issuers to mix electronic applications and paper based product disclosure documents in relation to the same customer.
- 47** However, a customer who is given access to an electronic product disclosure document and an application form may wish to use a print out of the application for applying for the product. This is not a strict case of using mixed media.
- 43** Have we identified the mixed-media issues correctly? Are there other issues that we need to consider? If so, what are they and how should they be addressed?
- 45** Are these requirements appropriate to address mixed-media distribution risks? If not, what are the appropriate requirements?

- 48** We do not wish to restrict the ability of customers who have access to electronic product disclosure documents and application forms to be able to use a printout of the application to apply for the product. However, there is a risk that customers who printout application forms may pass those printouts to other people without the relevant product disclosure documents. We seek public comments on how best to address this risk.
- 48A** Should we prohibit customers from using a print out of an electronic application form? If so, why?
- 48B** If customers are allowed to use printouts, how should the issuer be reasonably satisfied that the customer using the printout had access to the relevant product disclosure document?
- 48C** Should we prohibit customers who are given access to electronic application forms from allowing other people to access these applications unless the relevant product disclosure documents are also made available to such people? If so, what mechanism(s) could be used for that purpose?

Explanation

A Direct distribution using electronic application forms

- 1 We intend to have a consistent policy relating to electronic distribution of securities and life insurance and superannuation products. Our policy relating to electronic applications for securities is in PS 150. These policy proposals are an extension of the approach adopted in PS 150, with adaptations necessary to suit the specific legal requirements and market practices relating to life and superannuation products.
- 2 As in the case of securities relief in PS 150, we aim to:
 - (a) be technology neutral in our regulatory approach;
 - (b) promote the advantages that electronic commerce offers issuers and consumers; and
 - (c) ensure that consumers are not adversely affected where they use electronic applications to apply for life and superannuation products.
- 3 The proposals reflect our policy of focusing on regulatory principles when developing alternative means to achieve their underlying objectives. These proposals set out alternative means of achieving the underlying objectives of the current paper based application form requirements that apply to life and superannuation products in an electronic environment.
- 4 These proposals when adopted will replace the current requirements under the ISC guidelines. We will review our final policy to be adopted when the Financial Services Reform legislation is implemented.
- 5 We also expect issuers and other intermediaries involved in electronic distribution of life insurance and superannuation products to follow:

- (a) the best practice model for e-commerce developed by the government²; and
- (b) the requirements in the *Privacy Amendment (Private Sector) Bill 2000* when implemented.

How should the identity of a customer be established?

- 6 The underlying purpose of the signature requirement appears to be for evidentiary reasons as it:
 - (a) assists in identifying the customer applying for a life or superannuation product; and
 - (b) provides evidence of the acceptance on the part of the signatory of the responsibility for the information that is signed for.
- 7 Clause 6.2 of G.I.1 requires each application form to be signed and dated by a customer. The reference to an “Application Form” read in the context of the other requirements in G.I.1 implies that the application form is a paper document and therefore the signature should be in writing.
- 8 With regard to superannuation products under the SIS determination, the requirement for the application form to be printed on paper (clause 142) when read in the context of the other requirements also implies that a written signature is required.
- 9 Electronic applications, if used without effective alternative means to ascertain the identity of the customer, may raise risks such as:
 - (a) the non-issue of a policy to the right customer; or
 - (b) the issue of a policy to a person who did not apply for the product.
- 10 There are alternative means by which the identity of a customer using an electronic application form can reasonably be established in an electronic environment such as the use of:
 - (a) digital signature/certificate;
 - (b) personal identification numbers; and

² “Building Consumer Sovereignty in Electronic Commerce – A best practice model for business”, Minister for Financial Services and Regulation, May 2000

- (c) passwords;
 - (d) some forms of e-mail addresses;
 - (e) personal details customers include in the application such as name, address, date of birth and payment instructions.
- 11 We prefer to be flexible in allowing issuers to choose means that are appropriate for their needs when choosing methods to identify customers who make electronic applications for their products. This is because:
- (a) some methods have inherent limitations that may not suit all issuers. For example, digital signatures/certificates, personal identification numbers and passwords, which offer greater certainty than the other methods noted above, can generally be used where there is a pre-existing customer relationship. To be able to deal with first time customers, issuers may need to use other methods of customer identification; and
 - (b) technology relating to the use of alternatives to a written signature is rapidly and constantly evolving, making prescription difficult and unnecessarily restrictive.
- 12 This flexible approach is also consistent with the approach to signatures in the Electronic Transactions Act 1999, although that Act does not yet apply in this context.

How should the customer's responsibility for the personal information be established?

- 13 Some life insurance products require the customer to provide in the application form personal information for underwriting purposes. This information is
- (a) provided by the customer under their duty of disclosure to the issuer (under s21 of the Insurance Contracts Act 1984); and
 - (b) critical to the acceptance or rejection of the risk by the insurer as well as their subsequent acceptance of any claims made under the policy.
- 14 Because there is no requirement for a written signature, a customer using an electronic application may have a misconception that they are not accepting legal responsibility for the personal information electronically provided. As a result the customer may:

- (a) not take adequate care to provide full and accurate personal information; or
 - (b) subsequently dispute the information.
- 15 This risk is somewhat ameliorated where there is a requirement for an application to include a warning which alerts customers to their duty of disclosure and its consequences (clause 6.4 of G.I.1). However, the customer's attention may not be adequately drawn to this warning in an electronic environment, for example, where the warning is displayed on a screen other than the one where the customer is required to key-in their personal information.
- 16 Such risks can be addressed by requiring a customer to press an electronic key/button that acknowledges:
- (a) the receipt of the "duty of disclosure" warning under clause 6.4 before being able to key-in the relevant personal information; and
 - (b) the acceptance of responsibility for the information included in the application form.

How should customers be given the full benefit of product disclosure?

- 17 Application forms are required either to be attached to the relevant product disclosure documents, or where not attached, to make clear cross-references to the relevant product disclosure document (see clause 6.5 and 6.7(a) of G.I.1 and Clauses 7 and 14 of the SIS determination). These requirements aim to ensure that customers have the full benefit of the product disclosure documents when using the application forms.
- 18 Electronic distribution may give rise to different practical issues such as customers not being able to easily access the electronic product disclosure document when using electronic application forms.
- 19 To address such risks in a manner consistent with the approach we adopted in PS 150 for electronic applications for securities, we will require issuers to make available to customers electronic product disclosure documents using the same electronic means and at the same time as the electronic application form. In addition, they will be required to fully comply with all the disclosure requirements in G.I.1 or the SIS determination other than those that are specifically varied.

20 In relation to superannuation products under the SIS determination, we have also recognised that superannuation trustees may wish to provide a section s157 document with the product disclosure documents. Our proposals accommodate this in an electronic environment.

How should customers be alerted to their rights and obligations?

- 21 Application forms are required to include:
- (a) specific warnings to customers (eg the warnings under clause 6.10 of G.I.1 or clause 144 of the SIS determination which alert customers to their right to receive a relevant product disclosure document and the importance of using that information to make their purchasing decision); and
 - (b) certain acknowledgments by customers (eg the acknowledgments from the customers under clause 6.7(b), 6.11(d) or 6.15 of G.I.1 or clause 146 of the SIS determination).
- 22 These requirements enhance the effectiveness of the disclosure regime by alerting customers to their rights and obligations when applying for products.
- 23 Where these warnings and acknowledgments are included in an electronic application, it may increase risks such as:
- (a) the warning not attracting the customer's attention as easily as the warning in a paper application; and
 - (b) customers not paying sufficient attention to what is being acknowledged, as opposed to when making the acknowledgment in writing.
- 24 We consider that the above risks can be minimised through the use of electronic highlighting and submit button techniques placed with the relevant warnings/acknowledgments. For example, if the point of sale material is a CIB, a customer should only be able to commence completing an electronic application form after pressing a button/key acknowledging the receipt of the warning required under clause 6.10 of G.I.1.
- 25 We note that there are some requirements under G.I.1 and the SIS determination as to where the relevant warnings or acknowledgments should be placed. For example, the clause 6.10 warnings under G.I.1 must be placed as the first item in the application form.

- 26 Where there are no such specific requirements, we do not propose to prescribe the order or manner in which the relevant buttons/keys for customers to make various acknowledgments should be placed in an application form. We expect issuers and the industry to develop guidelines for placing these warnings and acknowledgments in electronic applications to enhance their effectiveness (eg by making them user friendly).

How should the safety and integrity of electronic information be safeguarded?

- 27 In the case of electronic distribution, it is important that:
- (a) the information a customer includes in an electronic application form, particularly the duty of disclosure information, is tamper proof and is received by the issuer in the same form in which it is transmitted by the customer; and
 - (b) customers using electronic applications have easy and clear access to the relevant product disclosure document.
- 28 To ensure that customers are reasonably protected from any problems with technology that causes corruption or loss of electronically transmitted information, we will require issuers not to issue their products in response to an electronic application unless they are reasonably satisfied that:
- (a) the customer had access to a current product disclosure document containing all the relevant information the issuer is required to provide to the customer before accepting an application; and
 - (b) the information received by the issuer is the same information which the customer included in the application.
- 29 The record keeping requirements included in the proposals (see paragraph 31 of the proposals) are also designed to augment the issuers' responsibility for ensuring the safety and integrity of electronically transmitted information.

How should any pressure selling risk be minimised?

- 30 Pressure selling is generally a key consumer concern in the case of distribution involving intermediaries (eg life agents and brokers). There is some possibility that e-mails containing product disclosure documents and application forms may be

thrust upon customers (pushed) along with messages which may pressure customers to take up such offers.

- 31 To address this risk we will require that issuers who send e-mails to customers attaching products disclosure documents and applications forms should clearly state that customers are not obliged to purchase the product and they should make their purchasing decision only on the basis of the relevant product disclosure document.
- 32 It is noted that any information included in such e-mails is, like the product disclosure documents, subject to the prohibitions against misleading and deceptive conduct in the ASIC Act. It is also noted that the cooling-off requirements that address pressure selling continue to apply to issuers.

How should electronic documents be lodged with us?

- 33 Because life companies are currently required to lodge product disclosure documents and application forms with ASIC, we have modified the lodgement requirements to address electronic documents in line with the conditions under PS 150.
- 34 Superannuation trustees are not subject to any similar lodgement requirements relating to paper based product disclosure documents and application forms under the SIS determination. We seek public comments on whether there is any justification for extending these lodgement requirements to superannuation trustees.

Interim relief

- 35 ASIC recently received a number of applications from life insurance companies seeking relief from the application form requirements to be able to undertake fully electronic distribution of their products. We have granted interim relief to these companies on terms similar to those included in these proposals pending the development of a final policy through public consultation. This relief will be valid until 1 July 2001. We will consider providing similar relief to other issuers upon application.

Current relief

- 36 We are aware that some issuers are already undertaking electronic distribution either on the basis of understandings reached with the ISC or their interpretation of the ISC

guidelines. While we do not wish to review those arrangements at this stage, issuers will need to comply with the final ASIC policy when adopted.

B Electronic distribution involving intermediaries

How should this policy apply to electronic distribution involving intermediaries

- 37 Intermediaries such as life agents, life brokers and persons acting on behalf of superannuation trustees (such as licensees under the Corporations Law), may wish to be involved in the electronic distribution of products. Their involvement can include:
- (a) bringing to customers' attention the availability of electronic product disclosure documents and application forms;
 - (b) sending such documents to customers by e-mail;
 - (c) delivery of software packages containing those documents to customers;
 - (d) assisting customers to complete electronic application forms; and
 - (e) completing electronic applications on behalf of a customer under a power of attorney given by that customer.
- 38 We do not wish to restrict the scope of involvement that intermediaries may have in the electronic distribution of products. However, where intermediaries are involved, we are keen to ensure that customers are:
- (a) not subject to any pressure selling;
 - (b) fully aware of the role played by the intermediary; and
 - (c) have the full benefit of the requirements in Section A.
- 39 Issuers have specific obligations relating to intermediaries, such as those relating to their training and supervision. Intermediaries also have specific obligations, such as the disclosure of their capacity under the Life Code when selling. Intermediaries involved in the distribution of superannuation interests have to comply with the Corporations Law requirements with regard to advising on public offer

superannuation funds: see Policy Statement 123 *Investment advisory services: superannuation advice* [PS 123].

- 40 Because the obligations applicable to intermediaries vary depending on the nature of the intermediary involved and the role played by the intermediary, we have not attempted to specify their relevant obligations under this relief. To address pressure selling risk, especially where the intermediary assists customers to complete electronic applications, we require intermediaries to bring to the customer's attention the relevant warnings and the effect of making specific acknowledgments that is required under this relief.
- 41 We are aware that customers sometimes give powers of attorney to intermediaries that enable the intermediary to purchase products on behalf of the customer. We are not sure whether there are any specific additional customer protection issues that arise in such a situation. Therefore we are seeking public comments on specific issues that arise in this context and how best to address such issues.

C Mixed-media distribution

- 42 We do not wish to restrict the ability of issuers to use mixed-media for their distribution. However, customers may be confused, if paper based and electronic versions of the relevant product disclosure documents and application forms that are concurrently available in the market are not substantially similar. This is likely to happen if the information layout and content vary between the paper and electronic versions. To minimise this risk, we will require issuers to ensure that paper and electronic versions of the relevant documents made available in the market remain substantially similar.
- 43 We also note that where customers are given access to electronic product disclosure documents and application forms as required under this relief, they may wish to use a printout of the electronic application to apply for the product. While this is not inconsistent with the relief proposed, there are concerns that people having access to the electronic documents may pass on printouts of applications to other people who do not have access to the product disclosure document. We seek public comments on how best to address this issue.

Regulation impact statement

Problem

- 1 Life insurance companies and superannuation trustees (issuers) need relief from their current paper based application form requirements to be able to distribute their products electronically.³ They need this relief because they are generally not able to take advantage of new e-technology to achieve potential cost savings and other efficiencies. This is because the current requirements relating to electronic distribution of promotional material are not very clear.⁴
- 2 However, there are possible risks to customers where electronic applications are to be used. These risks include the difficulties in establishing the identity of consumers using electronic applications and the safety and integrity of electronically transmitted information.

Objectives

- 3 The objectives of the proposals in this paper are to:
 - (a) enable issuers to use e-technology for the distribution of life insurance and superannuation products by providing clear guidance for its use; and
 - (b) ensure consumers are not adversely affected where they use electronic applications to purchase life insurance and superannuation products;
 - (c) promote the advantages that electronic commerce offers to issuers and customers;

³ The relevant requirements for:

(a) life insurance companies are in G.I.1 – “Disclosure Requirements for Promotional Material in the Life Insurance Industry”; and

(b) superannuation trustees are in the SIS determination under section 153 of the Superannuation Industry (Supervision) Act 1993.

⁴ There is existing ISC policy in a CEO letter and an Information letter to Approved Trustees (issued in October 1996) that permits the electronic distribution of promotional material to customers of life insurance and superannuation products. These guidelines are not clear and as a result have led to uncertainty and varying practices relating to electronic distribution.

- (d) be technology neutral and consistent in the regulation of financial products by extending the regulatory approach we have already adopted in relation to electronic applications for securities (under our Policy Statement 150 – “*Electronic applications and dealer personalised applications*”);
- (e) ensure consistency with the requirements of the *Electronic Transactions Act 1999* and the *Privacy Amendment (Private Sector) Bill 2000* if and when implemented; and
- (f) promote compliance with the best practice model for e-commerce developed by the government (“Building Consumer Sovereignty in Electronic Commerce – A best practice model for business”, Minister for Financial Services and Regulation, May 2000).

Options

- 4 We considered three options for dealing with the problem outlined above:
 - (a) Option 1 – Continue the administration of current requirements for electronic distribution in the ISC guidelines. This option involves clarifying the scope and application of the existing guidelines including the circumstances in which ASIC expects to be approached for specific relief. This option would not involve any policy reforms pending the implementation of the Financial Services Reform Bill.
 - (b) Option 2 – Provide relief to issuers of life products only. This option would involve the development of policy proposals which reflect recent specific relief granted by ASIC to a number of life companies. This option would not involve providing relief to superannuation trustees until such time that ASIC receives a number of relief requests relating to superannuation products.
 - (c) Option 3 – Provide conditional relief (as outlined in this Policy Proposal Paper) to enable issuers of life insurance and superannuation products to accept electronic application forms. This option involves the replacement of ISC guidelines with more coherent and comprehensive guidelines for granting relief.

Impact analysis

Impact group identification

- 5 The key stakeholders likely to be affected by these proposals include issuers (ie life companies and superannuation trustees), life agents, life brokers, other intermediaries (eg dealers), customers of life and superannuation products, consumer and industry bodies and complaints resolution schemes.

Analysis of Option 1

- 6 This option, which involves ASIC providing relief under existing ISC guidelines, does not satisfactorily address impediments to the use of electronic applications by life insurance companies and superannuation trustees. This is because it would result in:
 - (a) inconsistent treatment of electronic applications for securities (PS 150) and applications for life and superannuation products;
 - (b) continued uncertainty about the scope and application of the guidelines and the need to approach ASIC for specific relief; and
 - (c) inconsistent practices relating to the use of electronic applications within the superannuation and life insurance industries.
- 7 Therefore, Option 1 has the potential to:
 - (a) harm competitive equality between financial products and distort consumer choices; and
 - (b) reduce ASIC's ability to achieve economies of scale and scope in administering regulation.

Analysis of Option 2

- 8 This option, although it may address the needs of the life insurance industry, has the disadvantages of:
 - (a) creating an inconsistent approach between life insurance and securities on the one hand and superannuation on the other; and
 - (b) continued uncertainty about the scope and application of the ISC guidelines and the need to approach ASIC for specific relief in the case of superannuation.
- 9 Therefore, this option attracts most of the disadvantages identified under Option 1.

Analysis of Option 3

- 10 This option involves the grant of new relief (subject to conditions), which replaces existing ISC guidelines. This option addresses the problems identified in Option 1 by:
 - (a) ensuring greater consistency with the policy rationale and approach taken by ASIC in relation to securities (PS 150) subject to some variations which reflect some special characteristics of the regulatory regimes applicable to life companies and superannuation trustees;
 - (b) providing both life companies and superannuation trustees with a greater degree of certainty when undertaking electronic distribution; and
 - (c) ensuring greater consistency in market practices relating to the use of electronic application forms for distribution of life and superannuation products.
- 11 This option therefore has the advantages of:
 - (a) promoting competitive equality between financial products and thereby reducing the potential for distorting consumer choices; and
 - (b) enabling ASIC to achieve economies of scale and scope in administering regulation.

Consultation

- 12 These policy proposals will be subject to a consultation period of six weeks during which we will consult with key stakeholders including industry and consumer representatives. We will also conduct focus groups meetings if that is required.
- 13 We will use information provided in response to the PPP to undertake a more comprehensive cost benefit analysis of the proposals.

Conclusion and recommended option

- 14 We prefer Option 3, which involves the replacement of existing ISC guidelines because it promotes:
 - (a) certainty for issuers and other intermediaries undertaking electronic distribution of life insurance and superannuation products; and

(b) the adoption of a consistent regulatory approach to the electronic distribution of securities, life insurance and superannuation products.

15 Options 1 and 2 are not preferred because both those options have the disadvantages noted in paragraph 7 above.

Implementation and review

16 We propose to implement the final policy after any revisions resulting from public consultation with relevant stakeholders and interested parties within the next six weeks. We also propose to review the final policy two years after its implementation or earlier if the Financial Services Reform legislation results in changes to the relevant laws.

17 The implementation of Option 3 will involve publication by ASIC of the relevant guidelines for the grant of new relief to enable the use of electronic application forms by life companies and superannuation trustees (eg via ASIC's webpage at www.asic.gov.au).

Key terms

In this policy proposal:

“CIB” means a Customer Information Brochure under G.I.1;

“customer” means the owner or potential owner of a life policy subject to G.I.1 or a member or potential member of a superannuation fund subject to the SIS determination;

“G.I.1” means Life Circular G.I.1 titled “Disclosure Requirements for Promotional Material in the Life Insurance Industry”

“ISC” means the former Insurance and Superannuation Commission;

“ISC guidelines” means the guidelines in the Insurance and Superannuation Commission’s (ISC) CEO letter and the Information Letter to Approved Trustees (No 15) both issued in October 1996;

“issuer” means a life company subject to the requirements in G.I.1 or a trustee of a public offer entity subject to the requirements in the SIS determination;

“KFS” means a Key Features Statement under G.I.1 or the SIS determination;

“Product Disclosure Document” means:

- (a) in the case of G.I.1 – either a CIB or non CIB based point of sale material including a KFS;
- (b) in the case of the s153 Determination – a KFS and a separate investment strategies document or documents (if any) but does not include a s157 document;

“Section 157 document” has the same meaning as in the SIS determination;

“SIS Act” means the Superannuation Industry (Supervision) Act 1993; and

“SIS determination” means the determination issued pursuant to section 153 of the SIS Act titled “Applications for ‘single premium’ superannuation interests”.

What will happen next?

Stage 1

5 October 2000	Release of the PPP for public comment
----------------	---------------------------------------

Stage 2

6 October to 15 November 2000	Industry and consumer consultation including focus group meetings.
-------------------------------	--

16 November 2000	Closure of public comment
------------------	---------------------------

17 November 2000– 30 November 2000	Review of public comment and further industry and consumer consultation
---------------------------------------	---

Stage 3

18 December 2000	Issue of the Interim Policy Statement
------------------	---------------------------------------

Your comments

We invite your comments on the *proposals and issues for consideration* in this paper.

Comments are due by 16 November 2000 and should be sent to:

Angela Longo
Project team
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 5179 AA
Melbourne 3000
Fax - 03 9280 3339

E-mail: angela.longo@asic.gov.au You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.
