

30 January 2015

Ashly Hope
Strategic Policy Adviser
Australian Securities and Investments Commission (“ASIC”)
Level 5, 100 Market Street
Sydney NSW 2000

By email: ashly.hope@asic.gov.au

Dear Ashly

ASIC Consultation Paper 224: *Facilitating Electronic Delivery of Financial Services Disclosure* and update to Regulatory Guide 221

Thank you for the opportunity to provide comments on ASIC’s Consultation Paper 224: *Facilitating Electronic Delivery of Financial Services Disclosure* (“**Consultation Paper**”) and the draft update to Regulatory Guide 221 (“**Draft Regulatory Guide**”).

The Westpac Group including Westpac, St.George, Bank of Melbourne, BankSA, RAMS and BT Financial Group (“**Westpac**”) welcomes ASIC’s release of the Consultation Paper and Draft Regulatory Guide, both of which are aimed at better facilitating the provision of electronic financial services disclosure. We have also contributed to, and support, the submissions being made by the Australian Bankers’ Association and Financial Services Council.

The maturing of e-commerce into truly digital banking and financial services is a necessary, transformational part of every financial services company’s agenda. A key feature of Westpac’s strategy is our *Service Revolution*, which involves creating fundamentally superior customer experiences for each customer, every time. We are doing this by investing in capabilities that allow us to “*know, empower and wow*” our customers. We are focussed to achieve this outcome, but we also welcome actions by ASIC and Government that supports new and creative ways of interacting.

This submission outlines our general comments and a series of additional issues where further consideration is necessary. Appendix A contains our response to ASIC’s specific proposals. Although we have provided brief responses and points for consideration, we would be very interested in a meeting to further elaborate and respond to any questions that may arise from our submission.

General comments

1. Westpac is focussed on delivering superior service to customers and the provision of electronic financial services disclosure is a critical step to achieving this. We anticipate electronic disclosure will provide many benefits to consumers (who are increasingly interacting with us electronically) and providers, including greater security, customer convenience, faster service delivery, innovation, increased customer engagement, reduced paper usage and reduced industry costs. At a time when industry is looking to simplify products and services, simplification of financial services regulation will benefit consumers, the industry and the economy.
2. The Financial System Inquiry (FSI) Interim Report and Final Report advocate for industry reforms aimed at modernising the disclosure regime. The Government has also, in its de-regulation agenda, examined areas where regulators can actively reduce red tape and this is one such area. We welcome ASIC's public support for embracing technology and the digital era.
3. Westpac supports ASIC's efforts to facilitate electronic financial services disclosure. We also welcome the continued shift in legislative amendments and regulatory change to support and encourage industry innovation, technological change, and to meet the demands and expectations of consumers.

Particular comments:

Identified below are some opportunities Westpac would like explored during ASIC's consultation process:

- **Technology neutral language:** As the financial services industry is becoming more digitalised there is a need for technology neutral language in the Draft Regulatory Guide and relevant Class Order Relief to ensure regulation keeps up with emerging technologies without inadvertently restricting further development;
- **Consistency in online disclosure requirements:** There is opportunity to ensure regulation of online disclosure is consistent across all financial products, including via hyperlink for Product Disclosure Statements ("**PDS**") and Statements of Advice ("**SOA**"). Equivalent changes should also be made to credit disclosure documentation (for example, for credit cards) (see discussion for Proposal D below) as the same benefits apply and customers would expect consistent electronic disclosure for credit products and financial products;
- **Confirmation that electronic delivery is the default mode of delivery:** We would support ASIC confirming that electronic delivery is the default mode of delivery (for

new products), with consumers being able to elect to receive paper-based disclosure (except for fully online products). We also seek confirmation from ASIC that disclosures and other communications can be provided by email for existing products where a provider already has email addresses for its customers (subject to limited exceptions);

- **Legislative amendment:** Where ASIC does not have the power to provide relief or to amend legislation, we ask that ASIC refer the issue to Treasury or the Attorney-General's Department (as relevant) for legislative amendment;
- **Continued consultation with industry and stakeholders:** Continued consultation would be helpful given the likelihood of further developments in the provision of electronic disclosure. We ask and encourage that ASIC apply a facilitative approach whilst the industry develops more interactive PDSs and online platforms to deliver financial services disclosure.

Additional issues for consideration

Separate to the specific questions raised in the Consultation Paper, we suggest the following areas also be considered by ASIC (with Treasury and the Attorney-General's Department) as part of a holistic approach to facilitating electronic communications and transactions. We understand ASIC may not be the regulator to affect all of these changes, however, we believe ASIC should continue its leading role as a key stakeholder in settling these issues.

Electronic Transactions Act 1999 (Cth) ("ETA")

The ETA was established to ensure that a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication. The legislation achieves this by confirming that where a Commonwealth law requires someone to:

- give information in writing;
- provide a signature;
- produce a document in material form; or
- retain information

then that obligation can be satisfied electronically. The legislation reflects commercial practice and continues to be a valuable legislative tool 15 years after it was first implemented.

That said, one anomaly relating to the legislation is that the Electronic Transactions Regulations ("ETA Regulations") expressly excludes the *Corporations Act 2001 (Cth)* ("**Corporations Act**") and Corporations Regulations 2001 ("Corporations Regulations") from the key provisions of the ETA. Despite the move towards facilitating electronic disclosure, such carve-outs raise uncertainty as to whether certain requirements under the Corporations Act (for example, writing and signatures) can be satisfied electronically, in the absence of express

provisions enabling electronic disclosure (for example, section 1015C(1) in relation to the provision of PDSs). Westpac requests ASIC to support legislative amendment to remove the Corporations Act and Corporations Regulations carve-out from the ETA and refer this matter onto the Attorney-General's Department for legislative amendment.

We note that the ETA Regulations exclude other significant legislation from certain provisions of the ETA. The affected legislation include the *Superannuation Industry (Supervision) Act 1993 (Cth)* and Regulations (see items 142-143, Schedule 1, ETA Regulations) and *Life Insurance Act 1995 (Cth)* (see Items 77-78, Schedule 1, ETA Regulations). We believe there should be legislative amendment to remove these carve-outs to ensure that online disclosure requirements are consistent across all financial products including superannuation and life insurance products.

Insurance Contracts Act 1984 (Cth) ("ICA")

Within the insurance space, in relation to consent arrangements, as influenced by the Insurance Contracts Act, and disclosure (through incorporation by reference) as informed by the ETA there are some challenges for electronic interactions. While ASIC may not be able directly alter these issues, we raise them for your awareness.

For example, in relation to using electronic disclosure for large documents they can be located on a website and referenced by hyperlink, sent by email or other communication. This reduces the size of emails needing to be received and retained by customers and it also allows the document to be accessed through a more user-friendly medium than other fixed file formats.

For insurance products, the option to give a PDS by hyperlink in an email (as provided by ASIC Class Order 10/1219) may not be available. This is because PDSs for insurance products typically include information, statements and notices required under the ICA, and the ICA, when read with the ETA, arguably requires such information, statements and notices to be 'given in writing' where reasonably practicable, not just made available.

Westpac acknowledges that ASIC does not have the power to give relief from the requirements of the ICA and the ETA. However, Westpac asks ASIC:

- to raise this issue with Treasury (which administers the ICA) and the Attorney General's Department (which administers the ETA), and facilitate amendment to the ICA and/or the ETA to clarify that a requirement to 'give' information, statements and notices 'in writing' will be satisfied by providing the document via hyperlink; and
- in the meantime, to raise this issue with the Financial Ombudsman Service (**FOS**), and facilitate the issue of the joint Information Sheet by ASIC and FOS noting that, provided certain requirements are met, if an insurer or an AFS licensee provides an insurance PDS by hyperlink in an email, ASIC and FOS will be satisfied that such

information, statements and notices have been given in accordance with the requirements of the ICA.

ePayments Code

The ePayments Code plays an important role regulating electronic payment facilities in Australia. As a voluntary Code, administered by ASIC, the ePayments Code sets a balance between protecting consumer interests while allowing for a more flexible environment for payment providers to continue to innovate.

Unfortunately, the opt-in arrangements in the current ePayments Code has the impact of restricting electronic communication, which in turn has consequences for many products regulated under Chapter 7 of the Corporations Act (for example, transaction accounts, debit cards, internet banking, prepaid cards). Clause 21, requires a customer to “positively agree” to receiving an electronic communication. This creates a default position of paper communication and requires customer opt-in to use electronic communications, unless the product is designed exclusively for electronic use. Westpac believes it is important that ASIC amend the ePayments Code to ensure electronic communications operate on an opt-out basis, which is consistent with the proposals outlined in the Consultation Paper.

Next Steps

We appreciate the opportunity for input into this significant Consultation Paper and would welcome the opportunity to meet and discuss these issues further in detail. Please feel free to contact me if you have any further questions .

Yours faithfully

Simren Flora
Regulatory Affairs Manager
The Westpac Group

Enclosed:

- *Appendix A – response to CP224 proposals*

Appendix A – Response to CP224 Proposals

Proposal A: Implement Option 4 to facilitate e disclosure

Q1: Do you agree that we should further facilitate electronic disclosure, or take Option 5 (i.e. no change)? Please provide reasons.

Across all our businesses, we support further facilitation of e disclosure in line with Option 4 in the Consultation Paper. Option 4 allows businesses to deliver financial services electronically while preserving choice for consumers. This is also consistent with the broader Government policy theme of deregulation and further supported with the recommendations in the FSI Final Report. ASIC has an integral role to play as part of this current landscape to ensure financial services industry operates with the above considerations in mind.

An example of the movement toward electronic communication include the MyGOV account used for certain government services such as Medicare and Centrelink, whose website contains terms and conditions explaining how email messages will be delivered to the customer's inbox. An election can also be made for other alternative communication methods such as post.

As stated in the Draft Regulatory Guide, there are instances where disclosure may be provided electronically under the Corporations Act (RG 221.10). We feel it is appropriate for this to be extended to allow the provider flexibility in determining how an electronic disclosure is to be issued.

Opportunities to interact with our customers electronically will enhance the customer's experience, provide improved data security and a more effective means of disclosure. Westpac expects that, to ensure consistency, ASIC's regulatory guidance may be appropriate in looking at how electronic communications are effected. As part of Service Revolution the customer experience is at the forefront of this experience and we feel electronic delivery of disclosure's will achieve this component of the customer being '*empowered and wowed.*'

Q2: What benefits do you consider will result from our proposed approach?

The benefits from this approach would be very significant, summarised as follows:

Speed

Electronic disclosure is a much faster delivery method to keep customers informed and up to date. For example, Australian postal delivery from metropolitan areas to country interstate is 1 - 4 business days. For delivery of physical mail to rural properties which may have less frequent delivery cycles, delivery time may stretch to 8-10 business days. The almost instantaneous method of electronic disclosure, for example email, alleviates this lag in disclosure updates. Timely disclosure is particularly critical in light of the volume of regulatory change, which has resulted in a simultaneous increase in the number of mandatory regulatory-related disclosures

to customers. Therefore having the avenue of providing electronic disclosure allows us to deliver this information in a faster and more useful method for the consumer. Electronic disclosure via email also enhances our ability to quickly provide customers with the most up to date information in the appropriate context. For instance, if customers contact us over the telephone, via a teleconference or an Online Live Chat service, we can provide the relevant disclosure documents immediately via email.

Convenience

Electronic delivery presents an accessible, searchable and portable method for customers to receive, retrieve, consider and store disclosures. Initial access is more convenient as customers can easily access disclosure on any device with access to the Internet with subsequent storage able to occur as per the customer's preference. It is our view that the simplicity and convenience of filing an email makes it more likely that a customer will retain disclosure information than if it were sent by mail. With electronic delivery, customers can search through historical emails to quickly and easily locate the disclosure. It also enables customers to potentially save copies of the document in multiple places, increasing the ability of the customer to subsequently retrieve the disclosure. It also provides an accessible option for our customers with vision, hearing or other accessibility issues.

Reliability and Security

It is Westpac's view that our customers have a more stable electronic profile than a physical presence. When compared to physical delivery of mail that may or may not be received, and which relies on the customer to update their physical address records when they move, email offers increased receipt surety.

Further, email offers a more secure form of delivery when providing more sensitive customer disclosure, such as a periodic statements, annual superannuation information and insurance policy schedules. In addition to emails being directly sent to an individual's personal inbox, electronic delivery can implement password protection to access information online or through a secure platform.

Cost and environment

In FY13 postage costs alone (excluding paper, envelopes and mail house costs) were \$7.4 million for all of BT Financial Group. Mail house printing costs were \$5.6 million (which includes Wraps, Asgard, Corp & Retail Super, Life & General Insurance). For the Platform side of the business, including BT Wrap, Corporate Super and Asgard more than \$800,000 in printing costs of disclosure documents will be saved for new investors and \$200,000 printing of disclosure for existing investors in relation to Significant Event Notices. Additional cost savings would be realised in reduced storage costs, distribution costs and printing costs. In FY13 Westpac consumed more than 3000 tonnes of paper, with an associated stationary and postage cost of \$130M. The infrastructure supporting the use of paper is rapidly reaching

unsustainable levels, with Australia Post increasing prices 10% in 2013 with a further ~10-20% tabled for April 2014 to address operating costs.

In our financial year from 1 October 2013 to 30 September 2014, Westpac, St George, Bank of Melbourne and Bank SA brands (excluding BTFG) incurred costs of approximately \$94 million in stationary and postage related to disclosure documents, statements and other operational customer communications. Statements accounted for \$48.2M and disclosures for approximately \$4.6m. The balance relates to operational communications which are a combination of both compliance and service based communications. If we assume we can achieve 80% of customers accepting the electronic default then the potential savings opportunity is more than \$42M (approximately \$42M from statements and disclosure documents provided to customers at origination plus costs of ongoing compliance communications). We estimate that approximately 40% of these costs relate to financial services disclosures and therefore savings that we would expect to realise from the proposed changes. Approximately 60% of these costs relate to credit products and therefore savings we would expect to realise should the treatment of credit disclosures be aligned with the proposed treatment of financial services disclosures.

Q3: What disadvantages do you consider will result from our proposed approach?

While there are many added benefits there are some challenges.

We note there is a small proportion of existing (and potentially future) customers that won't have email and therefore require an alternative method of delivery (such as paper but also accessing information via online banking or through mobile devices). We will ensure that paper delivery continues to be an available delivery option to cater for these customers, unless the relevant product is offered as a fully online product as stated in the Draft RG 221 item 7 of Table¹.

We also acknowledge the different security and fraud risks of electronic disclosure. However as noted above, there are appropriate controls we can implement to mitigate and manage these risks to an acceptable standard, through for example, the use of password protected access. We believe this risk is lower than the security and fraud risks posed by delivery by mail. In any event, our access to accounts and other financial services are also governed by strict identification requirements and fraud monitoring oversight.

One other potential disadvantage is that uncertainty could arise from the Corporations Regulations obligation in 7.7.01(2) and 7.9.02A(1) that providers must be reasonably satisfied that the relevant document has been received. These provisions apply to making FSGs and PDSs available electronically under sections 940(C)(7)(a) and 1015(C)(4) respectively, as agreed by the client. FSGs and PDSs can be given and/or made available (including electronically)

¹ Except for fully online products providers must make it easy for clients to request printed copies of disclosures at no cost to themselves.

under other provisions, without the provider having to be satisfied that the relevant document has actually been received by the client. For reasons stated above, we believe that electronic delivery offers greater confidence, however, we suggest there would be value in ASIC providing clearer guidance around how this requirement will operate for electronic delivery.

We also note that ASIC class order [CO 10/1219] currently provides relief from these provisions in relation to making PDSs and FSGs available on a website.

Q4: Are there any other options we should consider to meet our regulatory objective of further facilitating electronic disclosures and encouraging the use of more innovative PDSs, while ensuring that consumer choice about the method by which they receive disclosures is not removed?

We confirm our support of Option 4 to allow providers to publish disclosures electronically, where an email address for a client is on file, without obtaining the express consent of the customer, as we strongly feel this will facilitate the development of more innovative PDSs and more effective, timely and convenient disclosure.

We also believe however that where a product is developed and made available to prospective investors as a fully online product, the product issuer should not be required to facilitate choice for paper-based disclosure. In essence, technology-based product innovation often involving benefits such as administrative efficiency or lower fees and this should not be stifled by a mandatory requirement to facilitate paper-based investment at the same time.

Also we would like ASIC to consider allowing the disclosure to be placed online, and an email or other notification sent to the adviser to notify them of the disclosure's availability. This would be a solution for our investors who don't have an email address on file (incl. those who would prefer to be contact by their adviser only).

Proposal B1: Update RG 221 to make it clear that if we have an email address for a client we do not need consent to use that address to deliver disclosures electronically.

Q1: Do you agree with this proposal? Please give reasons for your answer.

The expectation for most consumers is that when they provide their email address, communications may be sent by email. In an era of digitisation we believe that it is important that businesses and consumers have confidence and clarity in terms of this being the default option. We support the notion that if we have an email address for a client that we not need consent to use that email address to deliver disclosures electronically. This is a common sense notion that we are able to interact with our customers with the information they provide us. We should be able to use the same policies and processes to determine if a disclosure can be sent to a postal address to determine if disclosure can be sent to an email address. We would of course notify existing customers through the means we currently communicate with them

that going forward we would utilise their email address as the default means of communication, subject to their ability to opt in to paper –based disclosures.

To the extent considered necessary, we recommend that any relief or guidance apply equally to existing customers where we already have an email address and to new customers where we obtain an email address. Also, we seek confirmation from ASIC whether nomination of an email address for one product or service can also be taken as nomination for other products/services provided by that entity or a related body corporate without the need for obtaining additional consents from the customer. See response to Q13 below as to the requested guidance on communications to existing customers regarding email communication.

Q2: Are there other barriers to using email addresses for delivery of disclosures?

As set out in response to Proposal A, Q3 above, there are some challenges to be addressed however our view is that these challenges are not barriers and that they can be managed.

Emails offer a simple means for the customers to update their details and we encourage a format which offers our customers that simplicity. For those customers for whom we do not have an email address, they will not be adversely affected as we will have an opt -out of electronic delivery option, unless it is a fully online product.

Q3: What are the consequences of making this change? For example, are there significant numbers of clients who have supplied email addresses and who currently do not have disclosures delivered to those email addresses, but who would be able to under this proposal?

Westpac Group has 61% or 3.5 million customers with a recorded e-mail address, and 41% of customers choose to receive their statements electronically. These numbers are steadily growing.

The ASIC proposals, particularly if it is extended to consumer credit disclosures, offers the opportunity to potentially provide electronic disclosures to all of these existing customers and to new customers, improving the way we communicate with them. We believe the benefits for customers and for providers are significant, as outlined in our response to Proposal 1, Q2 above.

Moving to an opt-out arrangement will help streamline our customer on-boarding processes, reduce administrative effort, reduce costs and improve the customer experience.

We will need to develop our solution to give effect to the proposed changes, which will include changes to systems, processes and documentation, and the implementation of a communication plan to let customers know about the changes and remind them of the need to notify us of any changes to their contact information, including email addresses. This will be a measured approach in developing this change to adequately transition our customer base to electronic communication and ensuring we bring our customers with us and not implement a unilateral change.

Q4: Do you agree that the provision of an email address means a client or potential client is comfortable with all forms of disclosure being delivered to that email address? If yes, are there any consumers or groups of consumers for whom this might not be the case?

Our view is that if a customer provides an email address, they expect (and it is reasonable to assume) that we may communicate with them by email and that this would apply to all forms of disclosure. There may be some customers who do not have access to the internet or are not comfortable with electronic disclosure. Those customers will be able to opt for paper disclosure.

Q5: When a provider is seeking an address from a client or potential client, should there be any information, warnings or advice given about the potential ways the address might be used?

We do not support the proposal for a warning statement along the lines discussed in paragraph 33 of the Consultation Paper. Such a statement was not required by ASIC for paper-based communications and creating new rules for electronic communication, which were not imposed for paper communication, would be inconsistent with the intent of the Consultation Paper and the deregulation agenda. Instead of prescriptive warnings, we will ensure customers know they can opt-out, the addition of prescriptive ‘warnings’ will place an unnecessary burden and cost on providers.

Q6: Are there particular kinds of disclosure for which consumers might be more or less likely to prefer electronic delivery?

We believe if a customer provides an email address they would be open to receiving electronic delivery for any product or service for which they have a relationship with us. In this regard there are no particular kinds of disclosure that are likely to be more or less favourable to be sent electronically. The benefits of electronic delivery, as set out above, apply equally across a wide range of different communications.

Q7: Does it matter to whom the consumer provided the email address?

We believe that if a customer has provided an email address for one product or service, that email address should be able to be used to send the customer disclosure documents for other products or services provided by that entity or a related body corporate without the need for obtaining additional consents from the customer. In certain situations, agents such as advisers open accounts and products on behalf of their clients (either, in the name of the underlying client or in the adviser’s capacity). It is our view that it should be acceptable for providers to provide disclosure documents to a customer electronically using the customer’s email address, whether that address was provided by the customer directly or by the agent on behalf of the customer.

Also, when a customer provides an email to a related body corporate, eg if a client has provided their email address to Westpac Banking Corporation, then arguably we should be

able to use that email address, provided the client has been made aware of how their personal information (including their email address) may be disclosed and used.

Q8: Do you have comments or views on our example in draft updated RG 221: see Example 1 at RG 221.35?

As similarly noted above, where it is clear that the customer is dealing with an adviser and has provided an email address, it is reasonable to assume that Big Company would be able to send disclosure material to the customer without having to make an assessment that the address was 'nominated' for the express purpose of receiving disclosure because it is clear that the adviser has an agency relationship with Big Company. This is analogous to the adviser providing other client details on behalf of their client.

Q9: For providers, how do you currently determine that an address (postal or email) has been nominated for the purposes of delivery of disclosures such as PDSs and Financial Services Guides (FSGs)?

Currently, our standard method to identify customers' consent to receive disclosure via email is to include consent language in the form of a tick box or acknowledgment on product, relevant advice documentation and account application forms. We also in most circumstances include clauses in our terms and conditions to alert customers that by opening or acquiring the product or account, they indicate their consent to receive updates via the email address provided as part of the application, in line with the terms and conditions of that product, as currently occurs with a few of our BT products such as Asgard, Wrap, Super for Life and Margin Lending.

Under ASIC's proposals in CP 224, we consider that a "nomination" can be achieved in a number of different ways.

In addition, many of our insurance PDS's and application forms note that, by applying for the product, the client consents to receiving product documentation, information and notices by email, if they have nominated an email address.

Q10: Do you think that emailed disclosures are more or less likely to be lost (e.g. through changes to email addresses or misdelivery) than posted disclosures? Please provide supporting evidence if possible.

As stated above we believe a clear benefit of electronic disclosure is that customers are more likely to retain electronic communications. It is our view that a customer is less likely to misplace a disclosure email than lose or throw away paper documentation. When a correct and valid email address is provided, there is a very low chance of an email to that address bouncing. It is our view that the most effective delivery method for disclosure for these consumers is via email, which presents a consistent, reliable and constant communication channel, rather than a physical address. Not only are emails more likely to be received by these customers, it is easier for the customer to retrieve the disclosure, through their emails

search function and also due to the ability to save copies of the disclosure in multiple locations.

Q11: Do you think that there is an issue with frequency of change of email addresses? Do you have any data to show frequency of change of email addresses?

This would be a similar issue as to change of address mentioned above in B1Q2 that generally people are less likely to change their email account than postal address. For those customers that are more transient as evidenced by the higher portion of renters, email is the constant form of communication within this channel². As with mailing addresses, customers will need to let us know when their email addresses change. In our communications with our customer regarding the proposed changes and how we will communicate with them, we can remind them of the need to notify us of any changes to their contact information, including email addresses. Also the onus should be on the customer to notify of any change of email address which also applies with communications through postal addresses.

As noted above it is our view that our customers have a more stable electronic profile than a physical presence. In any event where an email bounces we send then the communication in hard copy via paper. For the Online Banking migration, our current process is to notify the customer without online banking that a statement is ready to view whilst concurrently sending an email notification. If there is a problem with the delivery of the email notification (such as the mailbox longer existing) the account is switched back to paper statements.

Q12: Are there any particular contexts in which the current requirement for a client to 'nominate' an address would provide a barrier to efficient electronic disclosure—for example, obtaining an address for clients who acquire products through a third party such as an employer or other agent?

We do not see any particular barriers including where products are sourced through a third party such as a broker or agent. The application process should require an email address (in the same way as it currently requires a postal mailing address). We would like to rely on an email address provided by the customer directly or by a third party, in this case 'nominate' on behalf of the customer such as an advisor, agent or employer acquiring the product for or on behalf of the customer.

Q13: Where there is a provision allowing a disclosure to be notified, sent, given, provided or delivered electronically, do you need any further guidance on whether you can use an email address, that you hold, to satisfy such a requirement?

As set out above on pages 2 – 4 of this response, we support ASIC confirming in its Regulatory Guidance and Class Order Relief that electronic delivery is the default mode of delivery for

² <http://news.domain.com.au/domain/real-estate-news/with-more-people-renting-than-30-years-ago-change-is-needed-to-protect-tenants-rights-20131012-2vf3x.html>.

disclosure documents, with consumers being able to elect to receive paper-based disclosure, and that disclosure documents may be provided by email to existing customers where a provider has an email addresses for that customer without the need to obtain consent.

We envisage putting in place a communication plan so that our existing customers are made aware of changes and are given the opportunity to request paper disclosure if that is their preference. As noted above, we would also welcome confirmation from ASIC that providers may use a previously provided email address for an existing customer, without having the customer renominate that address for disclosure delivery. We believe this is consistent with the principle behind a default electronic approach - whereas requiring a positive renomination by existing investors is more aligned with the existing express consent mechanism that ASIC appears to have acknowledged is somewhat dated in the context of technological change and consumer behaviour.

Q14: Is there any other guidance or relief required to facilitate the delivery of disclosures by email to clients?

We reiterate our comments on pages 2-4 that we believe further changes to codes and legislation are required to enable us to implement the proposed changes.

In order to facilitate disclosures by email, we would appreciate confirmation from ASIC that instructions from a customer as to an email address can be notified verbally, for example on the phone and does not necessarily require a written instruction. Please note, Westpac has already approached ASIC for verbal consent to receive electronic statements.

For invalid email address bounce backs, we would send then in the alternative method requested (paper) but for leave notifications it should not be a burdensome and increased obligations to the current requirement. For “out of office” or leave responses, we suggest nothing further is required by the provider.

We repeat our comments provided at the beginning of this submission in relation to seeking ASIC’s support in relation to amendments to the Electronic Transaction Regulations, Insurance Contracts Act and the ePayments Code.

Q15: Please estimate any cost savings your business would expect to realise from this change.

In Westpac’s financial year from 1 October 2013 to 30 September 2014, AFS Retail & Business Banking (including the Westpac, St George, Bank of Melbourne and Bank SA brands, but excluding BT) incurred costs of approximately \$94 million in stationary and postage related to disclosure documents, statements and other operational customer communications. Statements accounted for \$48.2M and disclosures for approximately \$4.6m. The balance relates to operational communications which are a combination of both compliance and service based communications. If we assume we can achieve 80% of

customers accepting the electronic default then the potential savings opportunity is more than \$42M (approximately \$42M from statements and disclosure documents provided to customers at origination plus costs of ongoing compliance communications). We estimate that approximately 40% of these costs relate to financial services disclosures and therefore savings that we would expect to realise from the proposed changes. Approximately 60% of these costs relate to credit products and therefore savings we would expect to realise should the treatment of credit disclosures be aligned with the proposed treatment of financial services disclosures. In Westpac where our eSaver online product has an opt-out for e-statements 76% of customers have remained on e-statements. Costs for BTFG are \$17.7 million based on FY13 data and assumes 100% conversion of all documents and all customers.

Q16: Please estimate any additional costs that consumers might be expected to incur as a result of this change.

Other than personal printing costs, if the customer wishes to have a hard copy document, we do not envisage any additional costs to customers as a result of this change. Although this will be offset by having a more enduring record of the disclosure available to customers over time.

Proposal B2: We propose to give Class Order Relief to provide an additional method of delivery for most Ch 7 disclosures allowing providers to make a disclosure available on a website or other electronic facility provided clients: (a) are notified and (B) can still elect to receive that disclosure via an alternative method of delivery, on request.

Q1: Do you support this additional method of disclosure? Please give reasons for your answer.

As noted above, it is important that the guidance and class order remain technology neutral so as not to become quickly out of date. The class order and guidance should allow flexibility as to the method of delivery.

At this point, options for electronic delivery could include the following: emailing a link to a document; emailing a document as an attachment; notifying a customer by email or SMS that a document is available in online banking or some other digital mailbox; or sending a push notification to a customer's mobile phone through a mobile banking app to notify them of availability of a disclosure document. The appropriate method will depend on a number of factors including the nature of the disclosure, customer experience, technology feasibility and security.

For instance, providing a link ensures that the version of the document accessed by the customer is the most up-to-date version of the document, whereas making a PDF document available ensures the customer has the correct document as at the point in time that it is provided to them and is able to store it and refer back to it later - each method may be appropriate for different circumstances. We believe that this should also be available for

delivery of Fee Disclosure Statements and Renewal Notices. Please see our further comments in C1Q5.

Q2: Should clients be notified each time (via their existing method of communication) of the availability of the disclosure on a website or other electronic facility?

Whilst we are yet to develop our solutions, we expect to notify customers of the availability of a document on our website, in their online banking, in a digital mailbox, and among other methods. Notification could be by way of email, SMS or push notification through an online banking app, or some other method which hasn't been devised yet. We encourage ASIC to ensure the regulations are sufficiently principle-based to allow providers to use different types of technology over time to provide effective, timely and secure notification. This proposed requirement to notify a client should remain technology neutral.

Q3: What are acceptable methods of notification (e.g. letter, email, SMS, voice call, or other)?

The class order and guidance should allow flexibility as to the method of delivery. We are exploring many forms of technology in achieving this, for example by also incorporating SMS, push notifications etc.

Options for electronic delivery could include emailing a link to a document, emailing a document as an attachment, notifying a customer by email or SMS that a document is available in online banking or some other digital mailbox, sending a push notification to a customer's mobile phone through a mobile banking app to notify them of availability of a disclosure document, etc. As mentioned above, the appropriate method will depend on a number of factors including the nature of the disclosure, customer experience, technology feasibility and security.

Q4: How should notifications be made? Are there any design considerations you would suggest in the notice to help ensure clients do not miss the opportunity to access their disclosures? What guidance should ASIC give on this issue?

Further to the above, we request that the regulations aim to be sufficiently flexible to allow providers to use different types of technology, so long as they achieve the objectives of providing effective, timely and secure notification and the customer is given reasonable notice of the medium that will be used to convey the communication.

Q5: Do you have any data on the likelihood of clients printing their own copies of relevant disclosures when they are made available online?

We do not have data on the likelihood of customers printing where disclosures are made available online. We expect customers will still wish to see relevant documents at different stages over the life of their product or service, whether they do this in hardcopy or electronically will change over time. However, we believe our customers (and consumers generally) are moving towards reading and storing disclosures electronically without printing.

Q6: Do you think there should be restrictions on the use of hyperlinks and notifications?

No restrictions should be placed in this area. The regulations should be principles-based to allow us to use different types of technology, including hyperlinks, so long as they achieve the objectives of providing effective, timely and secure notification.

Q7: Provide feedback on the costs to your business of:

(a) developing or modifying an electronic facility: In some areas of our Group, costs for this are minimal for us as there is an existing relationship with a campaign system. We will however need to pay a minimal amount per email that's sent from the email campaign system. In other areas initial costs may be involved in minor system adjustments however these would be offset by the cost savings over time from less paper-based communication.

(b) printing and mailing disclosures: There will be significant cost savings across our business as a result of reduction in printing paper disclosures, storing and distributing them to branches and by mail. Exact numbers are difficult to estimate but we expect this to be in the region of \$4.6Million per annum.

(c) any savings if proposal implemented: If this proposal implemented we would save the above costs in (b) as we would not have to pay for printing of collateral, distribution of collateral to the physical network and/or mailing of these documents to the customers physical address.

Q8: Please estimate any costs that consumers might be expected to incur as a result of this change.

We do not envisage any costs to customers as a result of the changes.

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

Q1: Do you have any comments on our proposals for relief in proposal C1(a) regarding copies of the PDS?

Westpac is supportive of ASIC's proposals in C1 to facilitate more innovative PDSs including interactive PDSs to engage customers and provide effective disclosure, and note that this is consistent with Recommendation 23 of the FSI Final Report. We would welcome ASIC's guidance as to the sort of innovation that would be appropriate and we would welcome the opportunity to participate in the development of such guidance. We recommend that ASIC's relief and any guidance on this point should include technological neutral language as technology is constantly developing and ASIC policy should not inadvertently restrict further technological development.

Q2: Do you have any comments on the relief from the shorter PDS regime in proposal C1(b)? Do you have any other suggestions as to how this might be achieved? Do you think communicating ‘the same information’ is an appropriate limitation on a more innovative PDS?

Westpac supports relief from the requirements in the shorter PDS regime for innovative PDSs based on the innovative PDS satisfying the substantive content requirements of a shorter PDS. In particular, interactive PDSs will provide a more effective medium for the product issuer to explain key aspects such as the fee disclosure template and concepts such as indirect costs.

Q3: Do you think that our proposed requirement in proposal C1(c) that the mandated language be included ‘at or near the front of the PDS’ will accommodate more innovative PDSs?

Westpac agrees that that relief should be given from the requirement that certain language appear “at or near the front” to allow for more innovative PDSs. Recognising the more novel ways consumers might interact with and navigate an innovative electronic disclosure, the innovative PDS simply needs to be identifiable as a PDS and the issuer should be allowed to determine how best to achieve that in its innovative PDS.

In the section “Guidance on the use of more innovative PDSs” in the Draft Regulatory Guide RG 221.60, we do not think that time spent on a page is necessarily a measure that the disclosure has been read and understood. It would also add a requirement which is not currently imposed for paper form disclosure.

We do not agree with the use of a time clock as suggested in draft RG 221.60 as this is contrary to technological neutrality and not considered to be a useful indicator for consumers, who should be free to navigate the key sections of the PDS and decide the time spent reading each section. Existing provisions including Regulation 7.9.02B and the clear, concise and effective requirement provide adequate protection for consumers from unnecessary information.

Q4: Are there any further legislative barriers to your use of more innovative PDSs, including interactive PDSs?

We request ASIC’s general guidance on innovative PDSs, however, in technologically neutral language, as to the delivery of the content to ensure as a provider we meet our disclosure obligations to an acceptable standard.

We also request specific relief from s.1016A of the Corporations Act as it is difficult for innovative PDSs to satisfy the requirement that the application form must have been included in or accompanying the PDS. In addition, ASIC’s innovative PDS measures should be extended to IDPS guides under class order [13/763] both as a matter of consistency and on the basis that IDPS administration platforms inherently involve online functionality.

Q5: Do you think any of our proposed relief should be extended to other types of disclosure, such as FSGs and SOAs?

We believe that the regulation of online disclosure should be consistent across all financial products and services. We also believe that the benefits offer by electronic communications apply equally across all types of communications. While FSG's and SOA's are shorter in comparison than a traditional PDS, the method of delivery should be left to the consumer to decide if they wish to interact in a digital way. We believe that the same principle also applies to Fee Disclosure Statements (FDS) and Renewal Notices under Chapter 7.7A. A consistent approach across products and services will make it easier for customers to deal with the financial services industry and for the financial services industry to manage compliance. Further there is a cost saving on these products and services when examining the amount of customers who receive FSG's or SOA's FDS or Renewal Notices. For this reason we believe that the same relief regarding naming a document e.g. "Statement of Advice" appearing "on the cover of, or at or near the front of, a Statement of Advice" (Corporations Act section 947A) and with regard to multiple current versions of the same document, should also be extended to FSG's and SOA's. Electronic disclosure relief should also extend to IDPSs operated under class order [13/763], including in relation to IDPS guides and annual and quarterly reports.

Proposal C2: We propose to update our guidance in RG 221 to (a) make it clear that we think Pt7.9 operates to allow a provider to have more than one PDS for a single financial product or offer, such as a version able to printed and interactive version; (b) make it clear that the requirement that a consumer can identify the information is part of the PDS is particularly important in the case of more innovative PDSs; and (c) include further guidance on the use of more innovative PDSs and update our 'good practice guidance' on electronic disclosure to help ensure consumers receive clear, concise and effective information when disclosures are delivered electronically and in electronic form.

Q1: Do you agree with this proposal? Please give reasons.

We support this proposal, to provide further guidance on the development and use of innovative PDS. We agree that innovative PDS' will assist to engage consumers and provide effective disclosure in ways current PDS have not always been able to. Whilst we welcome clarification that more than one PDS can be available for a particular product, printable versions should not be mandatory for fully online products.

Q2: Do you consider that there are any other areas where a lack of clarity of our view would prevent or discourage you from producing a more innovative PDS?

We support ASIC's proposal to provide further guidance on the delivery and design of innovative PDSs. ASIC's guidance should be delivered in a technologically neutral manner so not to restrict technological development and innovation, and contain clear and practical points to ensure providers fulfill their disclosure obligations. We welcome continuing industry consultation as this area further develops. We would encourage ASIC to take a facilitative approach to compliance where product issuers are transitioning to more innovative disclosure methods. Otherwise potential ASIC regulatory action could act as a deterrent to innovation.

Q3: Are there any other risks to consumers that may be more apparent in the electronic environment?

We do not consider there to be any material risks. The timing for change is right given that electronic communications have evolved along with security measures.

Q4: Do you think, where it does not already, any of our proposed updated guidance should be extended to other types of disclosures, such as FSGs and SOAs?

Yes, it is important to be consistent to reduce confusion and costs, and to encourage customers to adopt electronic disclosure for all types of disclosure documents including FSGs and SOAs.

Q5: Do you agree with our updated good practice guidance in Section D of Draft Regulatory Guide?

The good practice guidance is similar to what we as providers are considering in making this electronic facility. We agree that disclosure documents should be easy to retrieve, view and understand to ensure the consumers are engaged in a meaningful way. However, we do consider it would be helpful for the good practice guidance to confirm that an email bounce-back indicating that a client is on leave does not necessitate alternative communication.

Q6: Do you think complying with our updated good practice guidance would be too onerous?

We do not believe the good practice guidance is too onerous to comply with as discussed above.

Q7: Is there anything else you think would be usefully covered in our good practice guidance?

We do not have anything further to add aside from the above.

Proposal D: We are considering aligning the treatment of financial services disclosures and credit disclosures in the future.

Q1: Do you agree we should align the treatment of financial services disclosures and credit disclosures? Please give reasons for your answer.

We strongly believe that the treatment of financial services disclosures and credit disclosures should be aligned to allow electronic communication. It is quite common for consumers to have a number of financial services and credit products with the same financial institution and the financial institution should be able to communicate electronically with the customer in a consistent fashion across all those products. For example, a banking customer may commonly have a transaction account and internet banking access (regulated by the Corporations Act) plus a credit card and home loan (regulated by the *National Consumer Credit Protection Act*

2009 (Cth) (“**NCCP Act**”) all with the same bank. We do not think there is any policy reason, nor would consumers expect, that financial services should freely allow electronic communication while credit products retain a requirement for default paper communication.

We believe that all of the benefits of electronic disclosure outlined in this response, particularly on pages 5 and 6 apply equally to credit products.

This alignment will ensure customer choice and allow the customer the opportunity to benefit from improved and more innovative and engaging methods. It will also allow for increased efficiencies for the industry including consistency in the following areas: operational processes, risk and compliance processes and staff training. These efficiencies will have a substantial impact given the size of our consumer credit business.

Q2: Have you encountered barriers to the electronic provision of credit disclosures? If so, what are those barriers?

Yes, the key barriers to electronic communication for credit products are that consent is required and in some cases consent or the nomination of an electronic address must be done in writing.

Specifically:

- The ePayments Code requirement for consent will commonly apply as many credit products are also regulated by the ePayments Code (for example, credit cards). The ePayments Code restrictions are noted above.
- Regulation 28L of the NCCP Regulations provides that certain disclosure documents required under the NCCP Act can only be sent electronically with the consent of the consumer.
- The Electronic Transactions Regulations (which contain some of the rules for electronic communication applying to the National Credit Code) require provide that certain documents can only be sent electronically with the written consent of the consumer.
- Section 195 of the National Credit Code requires that a notice or other document must be sent to an address nominated in writing. This means that nomination of an email address by secure and authenticated means, such as phone banking, is restricted.

To enable the use of electronic communication as a default, we encourage ASIC to amend both the ePayments Code and NCCP Act (whether by using its modification powers or by issuing no action letters) with those changes to be effective at the same time as the proposed changes to RG 221.

Q3: Please estimate any compliance cost savings you would expect to realise if provisions for credit disclosures were aligned with our proposals for financial services disclosures.

There are significant cost savings (at least double the cost savings for electronic financial services disclosure) if credit disclosures were aligned with the electronic disclosure regime for financial services. We also expect that customers would expect credit disclosures to be aligned with financial services disclosures, and have electronic delivery as an option to receive disclosure for both credit products and financial services products.

Cost related to statements for credit products was approximately \$29m in FY14, with disclosures being approximately \$2.2M per annum, credit products account for ~60% of the associated costs.