

Ashley Brown
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Australian Securities and Investments Commission
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By email: product.regulation@asic.gov.au

Consultation Paper 313

Product Intervention Power

Dear Ashley,

Prospa Advance Pty Limited (“Prospa”) welcomes the opportunity to provide feedback on ASIC’s proposals on exercising the product intervention power in Pt 7.9A of the Corporations Act and Pt 6-7A of the National Credit Act and draft regulatory guide (RG 000) as outlined within Consultation Paper 313 (“the Paper”).

1. About Prospa

Australian small businesses are increasingly turning to small business lenders like Prospa due to our ability to provide a convenient online application process, timely credit decisions and funding, unsecured finance, repayment flexibility and an excellent customer experience.

Prospa is currently Australia’s #1 Online Small Business Lender¹, operating out of our Sydney headquarters. Prospa has supported small businesses with funding of more than \$1 billion and employs over 250 people in Australia.

Prospa offers Small Business Loans between \$5,000 to \$300,000, a revolving Line of Credit facility up to \$25,000 and Small Business No Interest Payment Plans. All customers of Prospa are small businesses with all funding decisions achieved by assessing more than 450 data points, including turnover, profit & loss, business tenure, size and industry sector.

Prospa uses a sophisticated risk-based scoring methodology developed over our more than seven years of lending to small businesses. We verify the specifics of every small business applicant using data from sources such as (but not limited to): ASIC’s own website, Equifax, bankstatements.com and the Australian Tax Office.

¹ Market position for online balance sheet lenders to Australian small businesses, based on Prospa’s volume as a percentage of total market volume in 2017 as reported in KPMG “The 3rd Asia Pacific Region Alternative Finance Industry Report”, November 2018; USDAUD FX rate of 0.767.

2. Clause 20: Limitations on the types of product intervention orders ASIC can make

The Paper states ASIC cannot make an order that imposes requirements in relation to a person's remuneration, except where it is related to the achievement of objectives directly related to the product. This is further supported by the explanatory memorandum and s301D(4) of the National Consumer Credit Protection Act (2009).

We note the Paper states this does not prevent ASIC from intervening in relation to remuneration that is linked to the distribution of the product.

Prospa would like to understand the specific circumstances and process ASIC would use to reach a determination that remuneration is linked to the achievement objectives directly to a product. When intervention powers are being exercised ASIC should seek to achieve a balanced view before making any determinations.

Incentivising sales teams is an important aspect of any sales environment as it ensures the right behaviour is being recognised, which ultimately underpins the sustainability and viability of a product. We believe in using a balanced scorecard which includes, for example, key performance indicators (KPIs) that relate directly to compliance standards and customer satisfaction as well as personal performance targets.

3. Clause 22 – Duration of a product intervention order

The Paper allows ASIC to make a product intervention order for an initial period of up to 18 months. This can be extended or made permanent with the approval of the Minister.

ASIC should provide guidelines on how it will determine the duration, and the duration of the extension, of a product intervention order. ASIC should provide clarification on the process for extending the duration of the Product Intervention Power and whether industry consultation will be required of ASIC.

Prospa encourages ASIC to consult broadly before seeking the Minister's approval to extend a product intervention order.

4. Clause 23 – Procedural and accountability requirements

Prospa seeks clarification around how ASIC intends to prepare and release public statements. It would be unfair for ASIC to make public any details of a product intervention order without prior consultation with the lender first. Many lenders (such as Prospa) are listed entities on the Australian Stock Exchange (ASX) and therefore have strict rules around reporting any material activity to the market and its shareholders.

5. Clauses 24-27 – Interaction with the design and distribution obligations

Prospa seeks clarity on how ASIC intends to interact with lenders using Product Intervention Powers even when the future design and distribution obligations are being met.

6. B1Q1 – Significant consumer detriment

The threshold view that significant consumer detriment is occurring, especially on a market-wide basis, must not be subjective and must take into account what proportion of those consumers can provide verified evidence of detriment; and the significance of that detriment and its scale ie potential to impact the stability of the financial system.

It is unclear how ASIC will gather and verify information it will rely on to determine whether consumer detriment is occurring or is likely to occur, so it would be helpful if ASIC could provide more detail of the proposed framework it intends to rely on. The weighting given to non-financial data needs to be defined, as does the weighting given to third party submissions, especially when political or media pressure is being exerted.

A fair and balanced approach will be required that offers an opportunity for lenders to respond and/or clarify details with ASIC before a determination is formed.

Prospa would encourage ASIC to apply the same “verification” standards expects from lenders when determining credit decisions.

Prospa notes that the term ‘consumer’ or “retail client” is used and not ‘small business’ and seeks clarification about how ASIC will treat the specific differences between consumers and small business owners.

7. B2Q1 – Determining how we may intervene

Understanding the factors ASIC considers when deciding the implementation timeframe of an order would be helpful. The lender should be provided sufficient time to review, understand and respond to any newly imposed compliance standards.

In some cases, major system changes, product documents, employee training etc. may be required which takes time to roll out sufficiently. The time of year can impact a lender’s ability to respond quickly. Prospa encourages ASIC to be willing to work with lenders to agree on a practical timeframe should an intervention order be issued.

Prospa proposes ASIC considers a mechanism for lenders to appeal or apply for relief if, for whatever reason, the lender cannot meet the changes being imposed, as per RG51.

8. C1Q1 – Consulting with affected persons

Prospa seeks clarification on how the definition of ‘retail clients’ will be applied to credit products. Prospa notes the definition of ‘retail clients’ in Chapter 7 of the Corporations Act does not clearly fit with credit products (as this Chapter was not developed for those products), and further notes the Paper interchangeably uses “consumers” and “retail clients” and that there is no clear distinction between the two categories.

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Prospa recommends ASIC clearly define ‘consumer’ and ‘retail clients’, and in its definition clarifies how “retail clients” will be applied to credit products.

Prospa seeks clarification on how ASIC treat will consumer lending and small business lending when exercising its Product Intervention Power. There are significant legal and operational differences, as consumer lending is subject to the NCCP Act and the responsible lending requirements under that Act, but these requirements do not apply to small business lending.

Business lenders do not differentiate between retail and wholesale clients since those concepts do not apply to credit business. Treating consumer lending, and lending to retail clients, in the same way is out of step with lenders’ legal obligations and operational practices. Members (in particular small business lenders which are not consumer lenders) are concerned that inadequate attention has been paid to this aspect of the new legislation and seek a more detailed consideration of this matter.

Prospa would be pleased to consult further on this matter to help guide ASIC’s deliberations.

Prospa proposes ASIC aligns the definitions and details determined from this consultation process with the definitions and details that will be published within the revised RG209 due out later this year.

9. C – Engagement and Consultation

Prospa would encourage further consultation with individual lenders and/or via industry bodies to work through the details outlined within C once details outlined within sections A and B have been clarified.

10. Next Steps

Should you wish to discuss any aspect of this submission, or require and additional information, please do not hesitate to contact me.

Kind regards,

Anna Fitzgerald
Group Head of Corporate Relations

