Explanatory Statement

ASIC (Information under the Deferred Sales Model for Add-On Insurance) Instrument 2021/632

This is the Explanatory Statement for *ASIC (Information under the Deferred Sales Model for Add-On Insurance) Instrument 2021/632*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (***ASIC***).

Summary

1. This instrument determines the information to be given to a customer, and the form and manner in which it is to be given, for the purposes of subsection 12DP(1) of the *Australian Securities and Investments Act 2001* (the ***Act***). Only if all conditions prescribed in the instrument are satisfied will there be an add-on insurance deferral period for the purpose of section 12DP of the Act.

2. This instrument is required for the operation of the deferred sales model for add-on insurance contained in Subdivision DA of Division 2 of Part 2 of the Act.

Purpose of the instrument

3. The purpose of this instrument is to determine the information to be given, and the form and manner in which the information is to be given to a customer in order to start an add-on insurance deferral period (***deferral period***) under subsection 12DP(1) of the Act.

4. If the information prescribed in the instrument is not given in the form and manner prescribed in the instrument there is no deferral period (subsection 12DP(2) of the Act).

5. A customer cannot be sold an add-on insurance product (as defined in section 12DO) of the Act) unless there has been an add-on insurance deferral period and it has ended (section 12DQ of the Act). A deferral period ends at the end of 4 days after the day on which it begins (paragraph 12DP(1)(b) of the Act).

Consultation

6. ASIC released Consultation Paper 339 *Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance* (CP 339) on 11 March 2021 which invited feedback on ASIC's proposed approach to the prescribed information as part of implementation of the deferred sales model.

7. ASIC received 6 confidential and 12 non-confidential written responses to CP 339 from insurers, product distributors, industry groups and associations, and consumer representatives. Of the submissions, 12 responded to ASIC's proposals for the prescribed information.

8. *ASIC Report 695: Response to submissions on CP 339 on the deferred sales model for add-on insurance* provides an overview of the feedback received in submissions and ASIC's response.

Operation of the instrument

9. The instrument determines the information (***prescribed information***) that must be given to a customer after acquiring, or committing to acquire, a principal product or service in order to start a deferral period.

10. The prescribed information must be given to the customer in respect of each acquisition, or commitment to acquire, otherwise there is no deferral period in relation to the customer acquiring, or entering into the commitment to acquire, that principal product or service (subsection 12DP(2) of the Act). This means that on each occasion that the customer purchases a principal product or service, the prescribed information must be given in respect of the principal product or service.

11. The prescribed information must also be given to the customer separately in respect of each add-on insurance product that will be offered otherwise no deferral period will start in respect of that add-on insurance product.

12. The instrument prescribes that the information must be given to the customer after, not before, the customer acquires, or commits to acquire, the principal product or service. The information could be given immediately after the acquisition or commitment or at a later time. The effect of the instrument is to determine a required sequence for the two conditions required by paragraph 12DP(1)(b) of the Act in order to begin a deferral period.

13. The instrument provides that there are two ways the prescribed information may be given: by electronic communication or in hard copy. Provision by electronic communication is the default manner of provision, as long as the person giving the information is satisfied that the customer can receive it that way.

14. Schedule 1 of the instrument determines the information to be given by electronic communication. The information must not contain any words or images other than those determined in the instrument. The instrument does not prescribe a fixed form or layout for the presentation of the information but does prescribe that the information must be in the sequence set out in Schedule 1.

15. To maintain uniformity, quality and legibility of the information when given by electronic communication, and with the intent of maximising customer engagement, the instrument prescribes that the information must be in the body of the electronic communication, use the prescribed subject line if sent using an electronic communication that has a subject line, and be displayed in a format that complies with Guideline 1.4 of the Web Content Accessibility Guidelines (WCAG) 2.0 Standard at Level AA.

16. Guideline 1.4 of the WCAG 2.0 Standard relating to distinguishability of content is concerned with making the default presentation of information as easy to perceive as possible to people with disabilities, primarily by making it easier for users to separate foreground information from the background.

17. Compliance with the other guidelines of WCAG 2.0 Standard is recommended, particularly Guideline 2.1 relating to keyboard accessibility, Guideline 3.1 relating to readable content and Guideline 4.1 relating to making the information compatible with user agents, including assistive technologies. Guidance on understanding and meeting the guidelines is accessible by hyperlink from the WCAG 2.0 Standard.

18. Schedule 1 contains a field for the insertion of an opt-out mechanism. The selection and construction of the opt-out mechanism that will be inserted in Schedule 1 should satisfy the following principles:

    (a) easy to use – requiring no to minimal instruction for a customer to opt-out;

    (b) frictionless – not involving any barriers or unnecessary processes before a customer can opt-out; and

    (c) continued availability – such that a consumer can access and use the mechanism to opt-out at any point during the period of 6 weeks beginning on the first day of the deferral period.

19. Schedule 1 also contains fields that need to be completed by the person giving the information before it is given, relating to identification of the customer, the add-on insurance product, the providers (both add-on insurance provider and principal product or service provider) and their contact details.

20. The only prescription in the instrument as to the particular manner of electronic communication is that the manner of electronic communication used must allow the customer to have convenient and ongoing access to the prescribed information throughout the period of 6 weeks beginning on the first day of the deferral period. For example, if the principal product is acquired in an online transaction, the prescribed information could be displayed in the webpage after the customer's purchase so long as it also allows the customer convenient and ongoing access to it. This could be satisfied by also being sent by email.

21. If the person giving the information is not, having taken reasonable steps, satisfied that the customer can receive the information by the electronic

communication, the prescribed information must be given in hard copy. Reasonable steps in order to be satisfied include checking with the customer:

(a) that they have access to the form of electronic communication that will be used by the provider; and

(b) that access to the form of electronic communication will be convenient and ongoing throughout the 6-week period beginning on the first day of the deferral period.

22. Schedule 2 of the instrument determines the information to be given by hard copy. Schedule 2 also depicts the fixed form in which that information must be presented when given in hard copy. A compliant version for hard copy provision of the information in Schedule 2 is downloadable from the ASIC website. The hard copy form of the information must be provided on an A4 size page with a white background and must not contain any words or images other than those determined in the instrument.

23. As with Schedule 1, Schedule 2 contains fields that need to be completed by the person giving the information before it is given, relating to identification of the customer, the add-on insurance product, the providers (both add-on insurance provider and principal product or service provider) and their contact details. These fields on the hard copy form in Schedule 2 can be either typed before printing or handwritten on the printed form.

24. If the hard copy form is sent by post, the prescribed information will, unless the contrary is proved, be deemed to be given to the customer on the day it would be delivered in the ordinary course of post.

25. Where a customer acquires, or commits to acquire, a principal product or service through an in-person interaction, the provider must, during the in-person interaction, give the customer the option of receiving the prescribed information in hard copy and give it in hard copy if the customer so elects. This is in addition to the requirement for default electronic provision of the prescribed information. The intent is to make the process of receiving the prescribed information convenient and efficient for the customer. During an in-person interaction, a customer is likely to receive other hard copy materials related to the acquisition of the principal product or service and, perhaps also to any add-on insurance products, so may have a reasonable expectation to similarly be given the prescribed information in hard copy during the in-person interaction.

26. An add-on insurance product that, as part of its terms and conditions, is sold on the basis that all disclosures and communications relating to it will only be given by electronic communication is exempt from this requirement. This is consistent with Regulatory Guide 221 *Facilitating digital financial services disclosures* (RG 221), which states:

> For products and services that, as part of their terms and conditions, are sold as digital only, providers need not make printed or printable copies of disclosures available. This is on the basis that at the time of

purchasing the product or service, the client was made aware that they would receive communications only in digital form. (RG 221.29).

27. The instrument commences on the later of:

    (a) the day after it is registered on the Federal Register of Legislation; and

    (b) 5 October 2021, the commencement date of the deferred sales model for add-on insurance pursuant to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

Incorporation by reference

28. The instrument incorporates Guideline 1.4 of the Web Content Accessibility Guidelines (WCAG) 2.0 Standard at Level AA as at the date of commencement, as the standard to which the presentation of the electronic provision of information must comply. Compliance with the other guidelines of WCAG 2.0 Standard is recommended. WCAG 2.0 Standard can be obtained online through the web address: http://www.w3.org/TR/WCAG20/.

29. The WCAG is an internationally recognised standard created by the World Wide Web Consortium. In 2010, the Australian Government, through the Web Accessibility National Transition Strategy (NTS), implemented a policy of web accessibility. Australian Government agencies are required to meet WCAG 2.0 Standard at Level AA. Meeting the standard makes content accessible to a wider range of people with disabilities as well as more usable to users in general. The standards are not technology specific.

30. Compliance with the design principles and guidelines of the WCAG 2.0 Standard at Level AA will ensure the prescribed information is in an accessible and legible format for customers regardless of the manner of electronic communication used to provide that information.

31. The instrument is compliant with section 14 of the *Legislation Act 2003*.

Legislative instrument and primary legislation

32. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument than primary legislation because subsection 12DP(4) of the Act provides for ASIC to determine, by legislative instrument, the prescribed information and the form and manner in which it is to be given.

Legislative authority

33. The instrument is made under subsection 12DP(4) of the Act.

34. Subsection 12DP(4) of the Act provides that ASIC may, by legislative instrument, determine the information to be given under subsection 12DP(1) of the Act, and the form and manner in which the information is to be given.

35. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

36. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A Statement of Compatibility with Human Rights is in the Attachment.

Attachment

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

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2. A customer cannot be sold an add-on insurance product (as defined in section 12DO) of the Act) unless there has been an add-on insurance deferral period and it has ended (section 12DQ of the Act). A deferral period ends at the end of 4 days after the day on which it begins (paragraph 12DP(1)(b) of the Act).

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.