

7 February 2025

[REDACTED]
Senior Executive Leader, Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2000

By email: [REDACTED]

Dear [REDACTED]

Consultation Statement 12 *Proposed remake of ASIC Class Order [CO 14/1262] Relief for 31-day notice term deposits (CS 12)*

1. This submission is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) and relates to CS 12, which the Australian Securities and Investments Commission (**ASIC**) released for consultation on 10 December 2024.
2. The Committee thanks ASIC for the opportunity to provide feedback on CS 12 and for allowing a reasonable time in which to respond to the consultation, taking into account the Christmas / New Year holiday period.

Background

3. ASIC Class Order [CO 14/1262] *Relief for 31-day notice term deposits* (the **Class Order**) was made in December 2014 to provide certainty for authorised deposit-taking institutions (**ADIs**) that 31-day notice term deposits would be treated as “basic deposit products” under various provisions of Chapter 7 of the *Corporations Act 2001* (Cth).
4. The Class Order is due to sunset on 1 April 2025.
5. ASIC is proposing to make a legislative instrument (the **Proposed Instrument**) which will effectively remake the Class Order with one modification—as an alternative to providing a post-maturity notice by no later than one business day after the maturity date, ADIs may issue a single notice that will serve the purpose of the current separate pre-maturity and post-maturity notices. The notice must be given to the customer at least seven days, and no more than 14 days, before the maturity date.

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6. ASIC has not:
 - (a) provided a draft of the Proposed Instrument; or
 - (b) stated what the sunset date would be for the Proposed Instrument.

Submissions

7. The Committee supports the remaking of the Class Order in principle, and agrees with ASIC that it is a necessary and useful part of the legislative framework.
8. The Committee is also supportive of the proposed amendment to allow ADIs to provide customers with a single notice, and acknowledges that it may be difficult for an ADI to give a post-maturity notice within one business day to a customer who has not opted in to receive electronic communications.
9. With respect to the consultation process, the Committee would encourage ASIC to adopt a more transparent approach, involving:
 - (a) disclosure of the proposed sunset date of the Proposed Instrument—as this would have allowed the Committee to comment on the appropriateness of its proposed duration; and
 - (b) publication of a draft of the Proposed Instrument—as this would have allowed the Committee to comment on its form and effectiveness.
10. More broadly, while the Committee agrees that the Class Order should be remade to ensure that ADIs have continuous benefit of the relief it contains in the short term, the Committee submits that it would be preferable for the notional amendments to the Corporations Act which are made by the Class Order (and which would be made by the Proposed Instrument) to be permanently incorporated into the body of the Corporations Act itself. This would reduce complexity and improve the navigability of the legislative framework.
11. The Committee observes that:
 - (a) the Class Order was originally implemented in a relatively hurried process;
 - (b) the purpose of the Class Order was to deal with the 31-day notice condition that was required due to the Australian Prudential Regulation Authority's adoption of a requirement of the Bank for International Settlements' Basel Committee on Banking Supervision;
 - (c) there was an understanding that the Corporations Act definition of "basic deposit product" would be substantially amended in the near term due to concerns about its complexity;
 - (d) ASIC inserted the additional consumer notification procedures (reflecting ASIC's concerns about possible consumer harms at that time) into the "basic deposit product" definition; and

- (e) those additional consumer notification procedures have served to add significant complexity to what was already a complicated definition of “basic deposit product”, in that it operates only where a counterfactual is satisfied, and varies the subject matter of the counterfactual.
12. Regardless of the merits of the consumer notification procedures, it is, in the view of the Committee, sub-optimal that the status of a deposit product as a ‘basic deposit product’ depends on whether procedures that are intended to deliver compliance with those notification procedures are effective at all times. It would be preferable to have any requirements for consumer notification implemented as separate stand-alone obligations in the *Corporations Regulations 2001* (Cth) rather than including them within the definition of “basic deposit product”.
13. The Committee considers that:
- (a) as part of Treasury’s ongoing maintenance of its portfolio laws, the Corporations Act should be amended to include the modified provisions of the Corporations Act that are in the Class Order (and which we anticipate will be included in the Proposed Instrument);
 - (b) further effort should be made to reduce the complexity and difficulty in navigability of determining what a basic deposit product is under the existing regulatory framework; and
 - (c) any legislative obligation to provide specific consumer notifications should be a stand-alone provision, rather than part of the basic deposit product definition.
14. Assuming that the Proposed Instrument is made, the Committee recommends that ASIC promptly make the necessary updates to any regulatory guides or other documents that currently refer to the Class Order, and replace such references with the name and number that are ultimately assigned to the Proposed Instrument. This will assist with navigability of the regulatory framework and reduce the risk of confusion.

Conclusion and further contact

15. The Committee hopes the feedback provided above will be useful, and is also happy to be consulted in a more informal manner should ASIC see fit to do so.
16. Please contact co-chair of the Committee [REDACTED] if ASIC wishes to discuss any aspect of this submission.

Yours sincerely

[REDACTED]

[REDACTED]
Chair
Business Law Section