REGULATORY GUIDE 38

The hawking prohibition

September 2021

About this guide

This guide is for people who offer financial products for issue or sale. It sets out our guidance on the hawking provisions in s992A and 992AA of the Corporations Act.

In particular, this guide explains how to comply with the hawking prohibition contained in s992A, a prohibition that aims to protect consumers from unsolicited offers of financial products.

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Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in September 2021 and is based on legislation and regulations as at the date of issue. In March 2024 we deleted the previous RG 38.10, renumbering the preceding two paragraphs, and updated some legislative instruments. In December 2026, we updated references to remade legislative instruments, removed out-of-date information, and reflected current style and drafting practices.

Previous versions:

- Superseded Regulatory Guide 38 *The hawking prohibitions*, issued December 2019
- Superseded guide *The hawking prohibitions: An ASIC guide*, issued July 2002 and reissued May 2005, and rebadged as a regulatory guide 5 July 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

Under the hawking prohibition, a person must not, in the course of, or because of, an unsolicited contact with a retail client:

- offer financial products for issue or sale; or
- request or invite the client to ask or apply for financial products.

The objective of the prohibition is for consumers to have greater control over their decisions to purchase financial products—the prohibition allows them to determine how they want to be contacted and the kinds of financial products they are offered.

This guide explains:

- the scope of the hawking prohibition;
- how an offeror can comply with the prohibition; and
- the consequences of a breach of the prohibition.

Purpose of this guide

RG 38.1 This guide is for people who offer financial products for issue or sale, and concerns situations involving unsolicited contact with consumers.

RG 38.2 It sets out our guidance on the hawking provisions in s992A and 992AA of the *Corporations Act 2001* (Corporations Act). In particular, this guide explains:

(a) the scope of the hawking prohibition in s992A (see Section B);

(b) what it means to make an offer because of or during an unsolicited contact (see Section C);

(c) the nature of the consent a consumer must give in order for a contact not to be unsolicited (see Section D); and

(d) the consequences of a breach of the prohibition, including a consumer's right to return a product and receive a refund (see Section E).

Note: In this guide, references to sections (s), divisions (Div) and parts (Pt) are to the Corporations Act, unless otherwise specified. References to regulations (reg) are to the *Corporations Regulations 2001* (Corporations Regulations), unless otherwise specified.

RG 38.3 This document contains general guidance only. The application of the hawking prohibition will depend on the particular facts and circumstances of each case.

RG 38.4 In this guide, we have highlighted the core statutory provisions of the hawking regime (see, for example, at RG 38.5). Where we have done so, we have indicated the relevant subsections or paragraphs of s992A and 992AA to which we are referring.

> Note: These core statutory provisions are highlighted at RG 38.5, RG 38.20, RG 38.34, RG 38.39, RG 38.48, RG 38.57–RG 38.58, RG 38.63, RG 38.69, RG 38.85, RG 38.102, RG 38.108, RG 38.111, RG 38.115, RG 38.127–RG 38.128, RG 38.129, RG 38.132–RG 38.134, RG 38.135–RG 38.136.

The hawking prohibition

RG 38.5 Under s992A(1), a person (the 'offeror') must not offer financial products for issue or sale to a retail client if the offer is made in the course of, or because of, an unsolicited contact.

RG 38.6 An offeror includes an issuer or seller of a financial product, as well as their agent or representative: see paragraph 5.31 of the Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (Explanatory Memorandum). The prohibition also extends to requesting or inviting a retail client to ask or apply for or purchase a financial product: see paragraph 5.28 of the Explanatory Memorandum.

RG 38.7 'Unsolicited contact' is contact by telephone, face-to-face, or any other real-time interaction in the nature of a discussion or conversation to which the consumer did not consent: see s992A(4).

> Note: In this guide, a person who offers, issues or sells a product, or who invites or requests a consumer to purchase or apply for a product is referred to as an 'offeror' and an existing, potential or prospective retail client or customer is referred to as a 'consumer', unless otherwise indicated.

RG 38.8 The hawking prohibition is intended to provide consumers with a degree of control over their decisions to purchase financial products—it allows them to determine how they want to be contacted and the kinds of products they are offered: see paragraph 5.4 of the Explanatory Memorandum.

RG 38.9 The prohibition aims to protect consumers from unsolicited offers of financial products, which often contribute to consumers purchasing products that do not meet their needs: see paragraph 5.16 of the Explanatory Memorandum.

RG 38.10 A failure to comply with the hawking prohibition is an offence of strict liability (see s992A(9)), and will give rise to a right of return on the part of the consumer: see s992AA(1).

General consumer protection provisions

RG 38.11 This guide should be considered in the context of the general consumer protection provisions of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

RG 38.12 Regardless of whether an offeror is subject to the hawking prohibition for a particular interaction, the offeror needs to ensure that they otherwise comply with:

(a) the product design and distribution obligations (see Pt 7.8A of the Corporations Act); and

(b) the prohibitions on:

(i) unconscionable conduct (see s12CA–12CC of the ASIC Act and s991A of the Corporations Act);

(ii) misleading or deceptive conduct (see s12DA–12DB of the ASIC Act; s1041E–1041H of the Corporations Act); and

(iii) harassment or coercion in connection with supply or payment for financial services (see s12DJ of the ASIC Act).

RG 38.13 The obligations under the hawking regime are distinct from, and complementary to, the obligations above.

B Scope of the hawking prohibition

Key points

The hawking prohibition applies when:

- a consumer is offered a financial product during or because of unsolicited contact; or
- a consumer is requested or invited to ask for, apply for or purchase a financial product, in the course of, or because of unsolicited contact.

Offerors of certain types of products are exempt from the requirements under the hawking prohibition: see RG 38.23–RG 38.33.

The hawking prohibition does not apply when the offer, request or invitation is made in the course of giving personal financial advice: see RG 38.20.

What the prohibition applies to

RG 38.14 In general terms, the hawking prohibition in s992A(1) prohibits offers, requests or invitations to ask for, apply for or purchase a financial product in certain circumstances ('offers, requests or invitations'). The prohibition applies where these offers, requests or invitations are made during or because of 'unsolicited contact' that is, partly or wholly, in the form of a real-time interaction in the nature of a conversation or discussion.

> Note: The term 'unsolicited contact' is defined in s992A(4) and (5). See also Sections C and D. In particular, for cases where consumers initiate contact, see RG 38.81–RG 38.84.

RG 38.15 The prohibition in s992A(1) applies to the making of offers, requests or invitations, not to the sale or issue that may result. This means that a breach happens when the offer, request or invitation is made. It is not a defence that a consumer had or was given time *after* an offer, request or invitation to consider whether to proceed, nor that the consumer was ultimately not issued or sold the product.

RG 38.16 Under s992A(1) 'a person' is prohibited from making these offers, requests or invitations. A person includes a body corporate. Paragraph 5.31 of the Explanatory Memorandum notes:

> … Applying the prohibition to such persons means that it is not limited to the provider of a financial service product—it can include, but is not limited to, agents and representatives of the provider of a financial product. Further, as entities are responsible for the actions of their agents and representatives, the hawking prohibition cannot be circumvented by engaging a third party to make offers on their behalf. Where there is no such relationship between a provider of a financial product and a third party who makes an offer, request or invitation, the third party will be solely responsible for any contravention of the hawking prohibition.

Offers made to retail clients

RG 38.17 The hawking prohibition applies only to offers that are made to a retail client: see s992A(1)(a).

> Note: 'Retail client' has the meaning given in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations.

RG 38.18 For superannuation products, an offeror will not breach the hawking prohibition where they contact an employer to discuss the employer's choice of default fund for employees who do not nominate a fund to receive payments.

RG 38.19 Although employers are generally considered to be retail clients within the meaning of the Corporations Act in respect of default fund arrangements, employers are not typically offered, or requested or invited to apply for an interest in the fund as part of these conversations. An employer selecting a superannuation fund as a default fund for its employees does not constitute the issue or sale of a financial product to that employer.

> Note: Trustees are, however, subject to the prohibition under s68A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) regarding employer inducements, as well as the obligation to give an employer a Product Disclosure Statement (PDS) at or before the time they become an employer sponsor: see s1012I of the Corporations Act.

Interaction with personal financial advice

RG 38.20 Under s992A(2), the hawking prohibition does not apply to an offer, request, or invitation made in the course of giving personal advice to the consumer by a person who is required under Div 2 of Pt 7.7A to act in the consumer's best interests.

> Note 1: For further guidance on the best interests duty and related obligations for financial advisers, see Regulatory Guide 175 *AFS licensing: Financial product advisers—Conduct and disclosure* (RG 175).
>
> Note 2: For more information on whether particular conduct amounts to the provision of financial product advice, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36).

Interaction with the deferred sales model regime for add-on insurance products

RG 38.21 An offer, request or invitation relating to an 'add-on insurance' product is not subject to the hawking prohibition during any 'add-on insurance deferral period': see s992A(2)(b) and 992A(3). Except when provided for by regulation, add-on insurance products will be subject to the hawking prohibition prior to, and after, any add-on insurance deferral period.

> Note 1: Section 12DO of the ASIC Act defines an 'add-on insurance product' and s12DP defines 'add-on insurance deferral period'.
>
> Note 2: It is a separate offence to offer an add-on insurance product during any applicable add-on insurance deferral period (see s12DR of the ASIC Act). For further information on the regulation of add-on insurance products, see Regulatory Guide 275 *The deferred sales model for add-on insurance* (RG 275).

RG 38.22 Where an add-on insurance product is exempt from the deferred sales model regime (such as by s12DX or 12DY of the ASIC Act), the hawking regime will generally apply to it: see paragraph 3.120 of the Explanatory Memorandum. An offeror must then consider whether the product is reasonably within scope of the consumer's consent under the hawking regime: see s992A(5)(a)(ii) and (b)(ii).

Products and situations exempt from the hawking prohibition

RG 38.23 Regulations may be made for the purpose of exempting products or classes of products from the hawking prohibition: see s992A(2)(c) and 992AA(3).

Basic banking products

RG 38.24 The Corporations Regulations exempt certain offers, requests or invitations that relate to basic banking products, including certain deposit products: see reg 7.8.21A(h) and (i). This exemption applies to offers relating to what are commonly treated as 'basic' deposit products for the purposes of the Corporations Act, including term deposits where funds can only be withdrawn after giving the issuer 31 days' notice: see Example 1.

RG 38.25 Under the exemption, any offer, request or invitation made in the course of contact that the consumer initiated is not subject to the hawking prohibition.

Example 1: Basic banking product

Tamanna has inherited a sum of money and attends her local bank branch to deposit it. In speaking to the bank teller, Hitesh, Tamanna mentions that she is looking to put it away for safe keeping. Hitesh notices that she is planning to deposit the money into a non-interest bearing account.

Hitesh suggests that if she wants, he could arrange for the money to be put into a three-year term deposit that she could terminate within 31 days' notice. Hitesh informs Tamanna that, this way, she can get some interest on the money she is depositing, especially if she plans not to use it for some time. Hitesh's conduct does not breach the prohibition, as the contact was initiated by Tamanna, and the product he introduces is a basic deposit product.

Listed securities

RG 38.26 Offers, requests or invitations made to consumers by telephone in relation to listed securities or interests in listed managed investment schemes are exempt from the hawking prohibition: see reg 7.8.21A(a) of the Corporations Regulations.

Certain offers of products to existing clients

RG 38.27 The hawking prohibition does not prevent contact with an existing client about a product already held by or on behalf of that client if the discussion does not involve an offer or invitation to apply for a new financial product: see paragraph 5.34 of the Explanatory Memorandum.

RG 38.28 In some cases, existing clients may need to be contacted in relation to product renewals. These renewals may involve the offer of a new financial product that is substantially similar to the one the consumer already holds. In such cases, the existing client can be contacted so long as they held the product to be renewed within the 30 days prior to the offer: see reg 7.8.21A(j) of the Corporations Regulations. This may arise:

(a) in the case of some types of financial products, when renewal of those products by a consumer involves the issuing of a new financial product (such as with term deposits or contracts for insurance);

(b) where the consumer is looking to renew a legacy product, and an offer is made in respect of a non-legacy product equivalent; or

(c) where the product held by the consumer lapsed within the last 30 days, and the 'renewal' requires the issuing (and therefore offering) of a new financial product.

Example 2: Insurance contract renewal

Sam's motor vehicle insurance is about to expire, and they are contacted by Rosita, a representative of their insurer. On that call, Sam indicates to Rosita that they are considering swapping insurers. In response to this, Rosita offers to renew Sam's policy for another year at a discounted rate.

The renewal involves the issuing of a new financial product. However, as Sam is an existing customer of Best Insurance and the offer made was in relation to a contract still in force, Rosita will not have breached the hawking prohibition in making the offer on the telephone call: see reg.7.8.21A(j).

Example 3: Lapsed policy

Lotte has pet insurance for her cat through Zel Insurance. The annual premium is paid every July by direct debit via her credit card. In April, Lotte decides to swap credit card providers, but forgets to change the direct debit information with Zel Insurance. In July, the payment of the insurance premium is declined by her old card issuer. As a result, her policy with Zel Insurance lapses.

Three weeks later, Lotte receives a phone call from Fallon, a representative from Zel Insurance. Fallon indicates that he is calling because he noticed that the payment had been declined, and wanted to confirm with Lotte that she was aware that her insurance policy had lapsed. Lotte says she did not realise this had happened. Fallon says that he is able to reinstate Lotte's policy if she would like. Lotte agrees.

Fallon's conduct in offering Lotte to reinstate her policy is not a breach of the hawking prohibition. Despite the fact that the reinstatement would involve the issue of a new financial product, the offer is permitted as it was in the nature of a renewal, involved a substantially similar policy to the one Lotte previously held, and was made within 30 days of the policy lapsing: see reg.7.8.21A(j).

RG 38.29 Where the offer is for the issue or sale of securities or interests in managed investment schemes, the hawking prohibition does not apply, if that offer is made to a client on whose behalf the offeror acquired or disposed of products in the last 12 months: see reg 7.8.21A(b) and (c).

Example 4: Stockbrokers

Juanita, an authorised representative of a market participant, calls a selection of her current clients—who Juanita has traded securities for in the past 12 months—to provide them with an offer to buy securities she thought they may be interested in. Some clients confirm their interest and ask to hear more about the offer. Juanita emails the relevant offer documents during the call, so that she can talk the client through the offer.

This conduct is not subject to the hawking prohibition as reg 7.8.21A(b) of the Corporations Regulations allows for offers of securities to a client of an offeror through whom the client has bought or sold securities within the last 12 months.

Off-market unsolicited offers

RG 38.30 The prohibition does not apply to unsolicited offers to purchase financial products off-market under Div 5A of Pt 7.9. A person who makes an offer to purchase financial products from another person should consider how Div 5A applies to that offer.

Offers, requests or invitations made as result of a specific statutory requirement

RG 38.31 A superannuation trustee will not breach the hawking prohibition if it contacts a consumer to fulfil its statutory obligations as trustee, which may involve making an offer, request or invitation: see Example 5.

Example 5: Unsolicited contact required by law

Joe recently passed away. His superannuation fund Seraphic Super has a record of Joe's binding death benefit nomination in which he nominated his husband, Jerry, as his beneficiary.

Seraphic Super makes the relevant enquiries—which include contacting Jerry over the phone—and determines that Jerry is the person entitled to receive the benefit. Seraphic Super provides Jerry with a range of options for the payment of the benefit in accordance with Seraphic Super's governing rules and the relevant requirements of the *Superannuation Industry (Supervision) Regulations 1994*.

The hawking prohibition does not apply in this circumstance because there is a specific statutory obligation requiring contact (in contrast to a general prohibition). Seraphic Super has a statutory obligation to pay the benefit to the person entitled to receive it as soon as practicable after the member has died. Seraphic Super must contact the beneficiary to fulfil this statutory obligation.

Other exemptions

RG 38.32 In addition to the exemptions mentioned above, the Corporations Regulations also exempt offers, requests or invitations in relation to:

(a) a crowd-sourced funding offer (see reg 7.8.21A(d));

(b) medical indemnity insurance provided to a medical professional as defined in the *Medical Indemnity Prudential (Supervision and Product Standards) Act 2003* (see reg 7.8.21A(f)); and

(c) an interest in a scheme that is in the nature of an insolvency litigation funding scheme, or a litigation funding arrangement (where declared not to be a managed investment scheme) (see reg 7.8.21A(g)).

RG 38.33 In addition, certain types of financial products and certain entities are exempt from the requirements of s992A and s992AA under ASIC legislative instruments: see Table 1 in the appendix. The legislative instruments listed in that table give broader relief from a range of regulatory requirements (e.g. disclosure obligations) as well as the hawking prohibition, to products the function or features of which are such that it is not appropriate for the whole (or part) of the financial product regulatory regime to apply. We have given relief where there is low risk of consumer harm.

C Making offers because of or during unsolicited contact

Key points

An offer, invitation or request that takes place in the course of, or because of, an unsolicited contact is prohibited by s992A: see RG 38.39–RG 38.42 and RG 38.48–RG 38.56.

For the purposes of the hawking regime, unsolicited contact is contact that takes place in real time to which the consumer did not consent: see RG 38.34–RG 38.38.

The hawking prohibition does not generally apply to advertising or the mere provision of information: see RG 38.43–RG 38.47.

The words 'because of' limit the breadth of offers that are prohibited to those where there is a 'causal nexus' between the unsolicited contact and the offer, request or invitation: see RG 38.48–RG 38.56.

Forms of contact subject to the prohibition

RG 38.34 Under s992A(4)(a), unsolicited contact in connection with a financial product is one which is, wholly or partly, in the form of:

(a) a telephone call;

(b) a face-to-face meeting; or

(c) any other real-time interaction in the nature of a discussion or conversation.

RG 38.35 An offeror is not prevented by the hawking prohibition from using communications that are not in real time to encourage consumers to request future contact: see Example 6. However, the offeror would need to ensure that any later offer, request, or invitation complies with the hawking prohibition.

Example 6: Bulk mail-out

Banksia Bank sends unsolicited letters and emails through a bulk mail-out to consumers. These letters and emails contain a reply slip for a consumer to request that Banksia call them at a future time and date convenient to the consumer to discuss certain types of products.

Such letters and emails would not breach the hawking prohibition, as they do not constitute a real-time interaction. Further, if a consumer returns the reply slip and Banksia contacts them within six weeks of its return, the

telephone call is not unsolicited, even though the consumer did not consent to receiving the original letter.

By contrast, if the consumer had not returned the reply slip, but Banksia nonetheless called the consumer and offered them products for sale, this call would be unsolicited, and the offers would constitute hawking.

Real-time interaction in the nature of a conversation or discussion

RG 38.36 The hawking prohibition is technology neutral. This means that, in addition to telephone calls and face-to-face meetings, the hawking prohibition also extends to other real-time interactions that are in the nature of a discussion or conversation, including instant messages, as well as through media that use artificial intelligence such as chat-bots: see s992A(4)(a)(iii).

RG 38.37 The hawking prohibition cannot be circumvented by engaging a third party to make offers on a person's behalf (as their representative or agent): see paragraph 5.31 of the Explanatory Memorandum. We consider that this includes where third parties are contracted to develop artificial intelligence sales tools, such as chat-bots. In such cases, the person commissioning the chat-bot's use, or under whose licence it operates will be responsible for any offer, request or invitation made by the chat-bot.

RG 38.38 Real-time interactions are ones where the offeror and consumer respond to each other continuously in real time, or where an expectation exists that both parties will provide an immediate response to each other: see paragraph 5.59 of the Explanatory Memorandum. This includes both verbal and written communication. As a result, whether forms of contact, such as text messages, constitute real-time interactions for the purposes of s992A(4) depends on the circumstances. Some messages may create an expectation of an immediate response, while others may not.

Offers, requests and invitations

RG 38.39 Section 992A(1) provides that a person must not offer a financial product for issue or sale to a consumer, or request or invite the consumer to ask or apply for a financial product or to purchase a financial product if the consumer is a retail client and the offer, request or invitation is made in the course of, or because of, an unsolicited contact with the consumer.

RG 38.40 The hawking prohibition cannot be avoided by approaching a consumer and inviting or requesting them to ask or apply for a financial product: see paragraph 5.28 of the Explanatory Memorandum.

RG 38.41 Some of the factors involved in determining whether conduct constitutes an offer, request or invitation are likely to include the context of the interaction, behaviour of the consumer and offeror, as well as the actual words exchanged between the parties: see Example 7.

RG 38.42 However, there are certain practices we consider would generally constitute an offer, request or invitation. For example:

(a) providing a consumer with a quote (e.g. in the case of an insurance product) (see Example 5.5 in the Explanatory Memorandum); or

(b) requesting or inviting a consumer to complete an application form (see paragraph 5.28 and Example 5.2 in the Explanatory Memorandum).

Note: Consumers can still be provided with application forms, but they cannot be asked to fill them out.

Example 7: Welcome calls and service calls

Minh recently took out insurance on her boat with Xenial Insurance. The representative Minh organised the insurance with, Damian, makes a welcome call to Minh to ensure the product has been set up correctly and to identify any further assistance or products Minh may require. Minh did not request this call.

During the course of the conversation, Minh mentions that she has just bought a caravan, and Damian identifies that Minh may need caravan insurance. Damian explains what Xenial's caravan insurance covers and gives Minh some general information about the product's features.

This call is unlikely to have breached the hawking prohibition, as Damian's conduct did not amount to the making of an offer, request or invitation in relation to a financial product.

However, if Damian used the welcome call as an opportunity to make an invitation, offer or request, that conduct would likely breach the hawking prohibition.

Advertising or giving information

RG 38.43 An offeror can provide information to a consumer in real time—including discussing the existence, function and purpose or features of a product—without breaching the hawking prohibition provided that no offer, invitation or request is made, even when this contact is not requested by the consumer.

RG 38.44 For the avoidance of doubt, where advertising or giving information involves practices that are not in the nature of a conversation, discussion, or real-time interaction, such as brochures, television or radio advertising, that conduct is not within the scope of the prohibition.

RG 38.45 Depending on the circumstances, offers, requests or invitations made using non-real time channels (such as email) following an unsolicited contact may still constitute a breach of the hawking prohibition. This is because offers, requests or invitations cannot be made 'because of' an unsolicited contact that is in real time: see also RG 38.48—RG 38.56.

Example 8: Promotional material

One-Stop for Everything is a supermarket chain that offers a variety of insurance products and regularly has tables set up inside its stores to hand out pamphlets about their cover.

Harish is doing his shopping and walks past a stall. Freya, a promoter for One-Stop for Everything, offers Harish a pamphlet about the chain's insurance products, and asks if he knew that One-Stop for Everything offers insurance. Harish indicates that he did not, and Freya explains that they provide a variety of car, home building and contents, and pet insurance policies. Harish thanks Freya for her explanation, takes the pamphlet, and continues shopping.

In providing factual information about One-Stop for Everything's products, Freya has not breached the hawking prohibition. Her conduct is unlikely to have amounted to a request or invitation to apply for the product.

Example 9: Following up information provided in real time with non-real-time communication

Rocio visits her local bank branch to get a bank cheque and explains that she needs the cheque to purchase a car. Lowanna is a staff member at the branch. Lowanna asks if Rocio has organised car insurance. Rocio indicates that she has not, but that she would like information on how to get it.

Lowanna provides Rocio with a brochure and asks if she can send Rocio an email with further benefits and features of the different options. Rocio agrees and provides her email address.

The following day, Rocio receives an email containing a telephone number to call and a hyperlink to apply online. Rocio clicks the 'apply here' link and follows the instructions to fill in her details and generate a quote.

It is unlikely that a contravention of the hawking prohibition has occurred in this scenario. Lowanna provided information in real time and followed up with information about the product not in real time. Rocio took an active step to apply for the product after being provided information.

If Lowanna made Rocio an offer for car insurance during the real-time interaction in the branch, this would be unsolicited, and would likely breach the hawking prohibition.

If the email Lowanna sent Rocio after their meeting contained a quote for car insurance, this would likely breach the hawking prohibition because a quote constitutes an offer, and was because of unsolicited contact.

Example 10: Pop-up advertisements

Donnah is checking her account balance on her investment loan on a personal banking app. A pop-up appears on her screen asking if she would like landlord insurance.

The pop-up contains a link that allows Donnah to fill in her details and generate a quote for the insurance. There is also a button that allows Donnah to dismiss the pop-up.

It is likely that this pop-up does not constitute a real-time interaction in the nature of a conversation or discussion; rather it is likely to be an advertisement. This is because the consumer and offeror are not responding to each other in real time, such that there is an expectation of immediate response: see paragraph 5.60 of the Explanatory Memorandum. As a result, the pop-up is unlikely to breach the hawking prohibition.

RG 38.46 The hawking prohibition does not apply to the advertising of an offer, or the publication of a statement about an offer that otherwise complies with or is subject to an exemption in s734 or s1018A: see s992A(7).

Note: See also Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254).

RG 38.47 When advertising or providing information, offerors still need to ensure that they comply with any other relevant laws, including the misleading or deceptive conduct and consumer protection provisions discussed at RG 38.11–RG 38.12. Offerors should also note ASIC's guidance in relation to advertising financial products and services.

Note: See Regulatory Guide 234 *Advertising financial products and services (including credit)* (RG 234) for information on obligations relating to advertising or promotional material.

Meaning of 'because of' in the hawking prohibition

RG 38.48 Under s992A(1)(b), for a breach of the hawking prohibition to occur, the offer, request or invitation to the consumer must be made 'because of' or 'in the course of', an unsolicited contact.

RG 38.49 An offer, request or invitation made during an unsolicited contact with a consumer will constitute one made 'in the course of' that contact: see paragraph 5.52 of the Explanatory Memorandum.

RG 38.50 Paragraph 5.53 of the Explanatory Memorandum states that the words 'because of' limit the breadth of offers that are prohibited to those where there is a 'causal nexus' between the unsolicited contact and the offer, request, or invitation. In addition, the paragraph says that:

> …[T]he inclusion of the words 'because of' seeks to address the situation in which a person makes unsolicited contact with a consumer, but the actual offer, request, or invitation is made during subsequent contact that is solicited by the consumer.

RG 38.51 The prohibition may still apply to offers, requests, or invitations that take place through a medium other than one that is a real-time interaction. For example, emailing a consumer an offer during or directly after an unsolicited outbound sales call with them would likely be 'because of' that call.

RG 38.52 Ultimately, whether the offer is caused by, or is a result of, the unsolicited contact, will depend on the facts and circumstances of each case: see paragraph 5.54 of the Explanatory Memorandum.

RG 38.53 For example, the causal nexus will be broken if a consumer obtains personal advice about a product after the unsolicited contact, and subsequently consents to further contact in relation to that product: see paragraph 5.56 of the Explanatory Memorandum.

RG 38.54 The causal nexus may also be broken if, between an unsolicited contact and subsequent offer, request or invitation, the consumer has:

(a) taken active steps of their own accord to consent to further contact regarding the offer, request or invitation;

(b) had a reasonable opportunity to consider any information that they have been provided about a financial product; and

(c) had a reasonable opportunity to assess the product's suitability prior to receiving the offer: see paragraph 5.55 of the Explanatory Memorandum.

RG 38.55 If during the course of an initial unsolicited contact, an offeror pressures or manipulates a consumer into providing consent to future contact in relation to a financial product, then any such future contact would continue to be unsolicited: see paragraph 5.57 of the Explanatory Memorandum.

RG 38.56 Generally, we consider that the following circumstances are unlikely, of themselves, to break the causal nexus:

(a) the consumer obtaining general advice;

(b) the consumer receiving a prospectus or PDS; or

(c) the offeror providing a disclaimer to the consumer, or obtaining a declaration from the consumer, to the effect that the offer is not because of the initial unsolicited contact.

D Establishing consumer consent to be contacted

Key points

In order to make an offer, request, or invitation in relation to a financial product, an offeror must receive consent from a consumer to contact them. The consent must be:

- positive and voluntary (see RG 38.63–RG 38.68);
- clear and such that a reasonable person would have understood that the consumer consented to the contact (see RG 38.69–RG 38.78); and
- given before the start of such contact (see RG 38.57–RG 38.59).

This consent can be withdrawn at any time prior to or during the course of the contact: see RG 38.115–RG 38.121.

In turn, the contact must:

- relate to financial products specifically consented to, or that are reasonably within the scope of the consent (see RG 38.85–RG 38.107); and
- be by a method of communication set out in the consumer's consent, where this is specified (see RG 38.108–RG 38.110).

The giving of consent generally

RG 38.57 Under s992A(4)(b), contact with a consumer by an offeror is 'unsolicited contact' if the consumer did not consent to the contact.

RG 38.58 Under s992A(5)(c) and (h), the consent must be given prior to the contact. The consent must not have been withdrawn before the contact occurs.

RG 38.59 These requirements mean an offeror cannot elicit consent from a consumer for that or further contact: see paragraphs 5.72, 5.74 and 5.75 of the Explanatory Memorandum.

RG 38.60 If a consumer's consent indicates the form of contact that the consumer wants, an offeror may only contact them in that form: see s992A(5)(f).

RG 38.61 Consent will be unsolicited unless it takes place after a consumer has given consent that is positive, voluntary, and clear. That consent must also be such that a reasonable person would have understood that the consumer was consenting to the contact: see s992A(5)(d)-(e), and paragraph 5.22 of the Explanatory Memorandum.

RG 38.62 A consumer may consent to a meeting, telephone call or other real-time interaction for one or more purposes, and the consent could take a number of forms. The consent may relate to a single instance or multiple instances of contact—for example, a request to receive telephone calls for a particular purpose over a period of time, not exceeding six weeks. In any case, the consent obtained should be positive, voluntary, and clear.

Consent must be positive and voluntary

RG 38.63 Under s992A(5)(d), offerors may only rely on a consumer's consent to be contacted if it is positive and voluntary.

Positive consent

RG 38.64 Positive consent involves an active step by the consumer, such as initiating contact with the offeror through a telephone call or online form: see paragraph 5.75 of the Explanatory Memorandum. This involves a conscious decision by the consumer, and cannot be given through silence or a failure to act.

RG 38.65 Consent cannot be provided in response to a leading question: see paragraph 5.76 of the Explanatory Memorandum. This includes situations where a leading question is used to attempt to obtain a renewal of consent.

RG 38.66 Generally, positive consent may involve either:

(a) consent sought through a standalone communication or interaction that demonstrates the consumer's decision; or

(b) where consent is sought in a broader discussion or larger document (e.g. forms relating to a separate product or service), clearly bringing to the consumer's attention the consent being sought, such that it allows for an express decision to be made: see paragraph 5.78 of the Explanatory Memorandum.

RG 38.67 A consumer's failure to act does not constitute a positive act of providing consent for the contact: see paragraph 5.76 of the Explanatory Memorandum. For example, the fact that a consumer did not opt-out of receiving future telephone calls when given an opportunity to do so on an application form will not, on its own, mean that subsequent telephone calls from the offeror are solicited: see Example 11.

Example 11: Opt-out notices

Good Deal Derivatives recently bought a client book from a dormant over the counter (OTC) derivatives dealer, Dazzling Derivatives, to obtain new clients for their business. As a dormant dealer, Dazzling Derivatives has not made contact or sought consent from any clients in the last year.

Good Deal Derivatives sends a letter to all individuals whose contact details it has acquired. In the letter, Good Deal Derivatives asks them to respond if they wish to opt-out of future financial product offers. A week later, Good Deal Derivatives calls all individuals in the client book, inviting them to start trading OTC derivatives using their platform. None of the recipients of the letter responded prior to receiving the telephone call.

By telephoning these individuals with an invitation, Good Deal Derivatives has breached the hawking prohibition. The consumers did not clearly and positively consent to this real-time interaction. Failure to respond or an absence of objection does not constitute consent to be contacted by the offeror. Previous consents that may have been granted by individuals in relation to offers from Dazzling Derivatives would have expired six weeks after they were given. In any event, such consents would not extend to offers from Good Deal Derivatives.

Example 12: Follow-up phone calls

Natasha makes a phone call to her bank to query a transaction on her account, and speaks with a customer service representative, Pierre. In the course of the conversation, Natasha mentions that she will be starting a new job the following week. The conversation progresses as follows:

Pierre: That's exciting!

Natasha: Yeah …

Pierre: Given you'll be starting a new job soon, perhaps you would like some information on our income protection options and for us to draw up some quotes?

Natasha does not respond. Pierre notices the silence, and continues:

Pierre: I know you might not have time to talk about it now, but I'll give you a call tomorrow and we can have a chat about it then.

Pierre calls Natasha the following day to make an offer for income protection. Pierre's conduct has breached the hawking prohibition because the call on which the offer was made was unsolicited, as it did not take place in response to positive consent. Natasha did not decline Pierre's proposed course of action, but this does not constitute positive consent.

Voluntary consent

RG 38.68 The consumer must have voluntarily made the decision to be contacted. A consent is not valid if the consumer was forced, pressured, or manipulated into consenting to be contacted by an offeror, or induced to contact the offeror, so the consumer could, for example, receive another service or take up another opportunity: see paragraphs 5.57, 5.75, and 5.77 of the Explanatory Memorandum, Example 13 and Example 14. This includes situations where the consent is to further or future contact in which an offer is to be made: see Example 15.

Example 13: Timeshare presentation

A promoter has a stall at a shopping centre with a banner about free movie tickets. The promoter approaches a consumer, Peter, about participating in a survey on holiday destinations and hearing information about holidays. The promoter offers Peter free movie tickets in return. The survey will take place at a nearby venue.

Peter goes to the venue and is told that the survey will take place at the end of a presentation and the free movie tickets will be handed out then. Peter discovers that the presentation is about a time-sharing scheme and is invited to apply for an interest in the scheme during the presentation.

Peter did not provide voluntary consent because it was not made clear that the consent being sought was for contact in relation to an offer to purchase an interest in a time-sharing scheme. In any case, the offer is 'because of' the promoter's initial, unsolicited contact with the consumer.

Had the promoter properly informed Peter that the presentation was for the purposes of offering interests in, or inviting or requesting applications for interests in, a time-sharing scheme, then consent given by Peter would have been voluntary.

Example 14: Price comparison website

Hong wants to switch comprehensive car insurers. He searches the internet for more information and finds an insurance price comparison website, 'Best Price Compare'. The homepage shows the logos of ten different insurance providers and describes the insurance that they offer. Hong clicks on a button that reads 'Compare your quotes'. Once he clicks on this button a dialogue box appears:

'By providing your details to Best Price Compare you are consenting to be contacted by telephone about offers of comprehensive car insurance by our Best Price Compare members. Do you wish to proceed?'

Hong wants to receive the quotes from Best Price Compare so answers 'yes' and proceeds to fill out his details on a webform, and submits it. He then compares the quotes that now appear on the page. Hong subsequently receives a telephone call from three of the member insurance providers offering to complete the purchase process.

These calls were solicited because Best Price Compare has made it clear to consumers that by answering 'yes' and filling out the form they will be contacted by telephone by Best Price Compare's member insurance providers. Hong has taken positive action by acknowledging that he consents to being contacted by the member insurance providers, and subsequently voluntarily submitted his details on the webform.

Example 15: Eliciting consent for further contact

Lerato calls Zaff Bank and asks for information about their term deposits and speaks with a sales representative, Akeno.

At the end of the call, unprompted by Lerato, Akeno asks:

'Can I call you tomorrow to discuss the superannuation products we offer?'

Lerato agrees. The following day, Akeno calls Lerato and in the course of the call invites him to apply for a superannuation product, 'Zaff MySuper'.

This constitutes an unsolicited invitation to apply, despite Lerato's consent to receive the call. This is because Akeno's question elicited Lerato's consent for the subsequent call: see paragraph 5.57 of the Explanatory Memorandum. Offerors cannot rely on consent that has been elicited.

Had Akeno asked Lerato if there is anything else he wishes to discuss, and Lerato had positively, clearly and voluntarily indicated that he would like to discuss superannuation and that he would like a follow-up call, then the telephone call to Lerato the following day would not have been elicited.

Consent must be clear and reasonably understood

RG 38.69 Under s992A(5)(e), a consumer's consent must be clear, and such that a reasonable person would have understood that the consumer consented to the contact: see also paragraphs 5.79 and 5.81 of the Explanatory Memorandum.

RG 38.70 This means that a consumer's consent must demonstrate that they understand they are consenting to being contacted for the purpose of being offered, or invited to purchase or apply for, a financial product. For consent to be clear, it must not be vague or ambiguous: see paragraph 5.79 of the Explanatory Memorandum.

RG 38.71 In addition, silence on the part of a consumer will generally not provide a clear basis for consent for contact in relation to the offer, request or invitation of a financial product.

RG 38.72 The purpose of the contact being consented to by the consumer should be clear from the language used to communicate it. The consumer must have clearly stated either the type of financial product they are interested in discussing or the type of outcome they wish to achieve through a financial product: see paragraph 5.80 of the Explanatory Memorandum and

RG 38.85–RG 38.106. This means that an offeror cannot rely on broad consent solicited from a consumer that does not specify products or a particular consumer need.

RG 38.73 The effect of s992A(5)(e) is that an offeror must be satisfied on a reasonable basis that the consumer was sufficiently informed so as to understand that:

(a) they have provided consent to being contacted by the offeror; and

(b) the contact may result in an offer of a financial product or a request or invitation to apply for a financial product (see paragraph 5.82 of the Explanatory Memorandum).

Example 16: Vague or ambiguous language for consent

Ahmad is looking for home contents insurance. He uses the instant chat box function on Sibylline Insurance's website to enquire. Farah from Sibylline Insurance responds. During the instant chat exchange, Ahmad mentions he has just purchased an engagement ring. Farah indicates that Sibylline Insurance also offers personal valuables insurance. The following conversation then takes place:

Ahmad: I don't think I need personal valuables insurance. I'll need to check.

Farah: Well, I could call you tomorrow and run you through an application if you like?

Ahmad: Ummm … I don't know, maybe …

Ahmad's language does not indicate clear and positive consent to be contacted by Farah in relation to personal valuables insurance. If Farah calls Ahmad and offers him such a product, this contact would be unsolicited and would breach the hawking prohibition. If Farah was uncertain whether Ahmad properly understood that any subsequent telephone calls were for the purpose of signing up to personal valuables insurance, she could have simply provided further information about that insurance.

RG 38.74 Whether there is a reasonable basis for considering a consumer to have understood what they are consenting to will depend on the circumstances in each case. For example, where a consumer begins filling out an online form but does not submit it, the partial supply of information does not provide a reasonable basis for considering the consumer to have consented to contact.

RG 38.75 Equally, where a consumer is handed a pamphlet about a product without any context and asks what it is about and why they have been given it, this is not a reasonable basis for considering the consumer to have consented to contact.

RG 38.76 It is unlikely that a consumer would understand what they are consenting to if they are incentivised to consent hastily to contact about a financial product

(e.g. as part of the terms and conditions of entering a competition): see paragraph 5.83 of the Explanatory Memorandum and RG 38.97.

Example 17: Competition form

A company runs a campaign where a consumer can fill in a form to enter a draw to win a new car. Small print contained in the lengthy terms and conditions attached to the form states that, by submitting their entry, the consumer consents to being called about the sale or offer of financial products.

Any telephone calls for the offer or sale of financial products that take place as a result of the information provided on the form would be considered unsolicited. The company did not specifically, or separately, draw the consumer's attention to being contacted about financial products. As a result, no reasonable person would likely have understood that the consumer had consented to contact in relation to the offer of financial products.

RG 38.77 Where an offeror does not obtain consent personally from a consumer, because it is obtained through a third party (e.g. if they use a third party promoter or lead generator), it remains a matter for the offeror to establish that the consent was positive, voluntary, clear and reasonably understood prior to making an offer. An offeror may breach the prohibition even if they had not intended to rely on consent that had not been properly given by a consumer: see Example 18.

Example 18: Website lead generator

Taraji has heard on the news about a surge in retail securities trading and decides to search the internet for more information. A link for Quick Traders appears stating, 'Learn about trading securities today!'. Taraji submits her contact details in a webform on the Quick Traders website.

Taraji is surprised when she later receives a call from Zuri, a representative from Dealin' Derivatives, who had used Quick Traders to generate leads. Zuri gives Taraji general information about securities trading, but in the course of this conversation invites Taraji instead to begin trading OTC derivatives using the Dealin' Derivatives platform.

Zuri's invitation is unsolicited as it does not take place in response to a consent voluntarily given in relation to the invitation to trade financial products, or for that matter to be contacted about derivatives. This breach occurs regardless of whether Zuri believes that Quick Traders properly sought consent from Taraji.

RG 38.78 As a matter of good practice, we suggest that offerors:

(a) encourage consumers to specify which financial products or classes of financial products they wish to discuss;

(b) provide consumers with enough information in a sufficiently prominent way so as to allow them to carefully consider whether to consent to the contact, and the form of that contact; and

(c) if in doubt, clarify and/or confirm the scope of the contact to which the consumer gives consent.

Clarifying the scope of a consumer's consent

RG 38.79 It may be necessary to clarify or confirm the scope of the consumer's consent where they use vague or ambiguous language, or where there may be a misunderstanding as to the function or purpose of a product. It may be the case that a clarification of the consumer's stated purpose (and therefore scope of consent) results in an offer of a different product than had been initially proposed. Offerors should not use the process of clarifying the consumer's objectives to artificially broaden or elicit consent.

Note: For more information on 'eliciting', see paragraph RG 38.97.

Example 19: Clarifying consent

Ezekiel, who lives in Sydney, calls his insurer, Papaya Insurance, to organise insurance for his car.

When he speaks to the customer service representative, Fatima, he indicates that he wants minimal insurance. Fatima explains to Ezekiel that all he is required to have by law is compulsory third-party (CTP) insurance. Ezekiel says CTP insurance is what he is after.

During the process of asking Ezekiel questions to generate a quote for CTP insurance, it becomes apparent to Fatima that Ezekiel assumes the product covers damage to the vehicle. She alerts him to the fact that CTP insurance will not cover damage to his car, and asks if he would like a product, such as comprehensive car insurance or third-party fire and theft insurance, that does cover the car itself. Ezekiel thanks Fatima and says that he does want insurance that will cover any kind of damage to his car.

Fatima continues explaining the differences between the types of insurance, and ultimately provides quotes in respect of comprehensive car insurance as well as CTP insurance.

Fatima's quote for comprehensive insurance does not breach the hawking prohibition on the basis that coverage for any kind of damage to the car was the outcome Ezekiel sought. She identified a possible misunderstanding, and her questions clarifying the scope of his consent were appropriate and unlikely to breach the hawking prohibition.

Example 20: Offering products reasonably within the scope of the consent

Emmily telephones Venture Insurance Co and speaks with a sales representative, Laura about acquiring insurance. The following conversation takes place:

Emmily: I want to be protected if there's a bushfire near my house.

Laura: Okay, we can help you with that. Before I do—you mentioned your house. Are you renting, or do you own it?

Emmily: I own the house.

Laura: In that case, you may wish to consider home building insurance, which we offer, as well as some form of contents insurance that will cover your possessions in the case of fire.

The discussion continues, and Laura eventually offers Emmily contents insurance and home building insurance.

While Emmily did not request either insurance by name, Emmily's initiation of contact constitutes consent to being contacted in relation to the offer of multiple insurances covering the same financial risk—loss she may suffer as the result of a fire: see RG 38.78. As Laura established that Emmily owned her place of residence, the offer of home building insurance does not breach the prohibition.

RG 38.80 Consent must at all times be clear, positive, and voluntary. Offerors are reminded that if they are unable to clarify consent so that they can be satisfied that there is valid consent in place, they are always able to provide consumers with information about products during the interaction. The consumer can then consider this information before taking a next step. This is consistent with the regime's objectives to give consumers greater control over their decisions to purchase financial products by determining the kinds of financial products they are offered: see paragraph 5.4 of the Explanatory Memorandum.

Consent in consumer-initiated interactions

RG 38.81 Section 992A(5)(c) requires that offerors rely only on consent provided by consumers before the start of the contact. However, where the consumer initiates real-time interaction directly, it is not technically possible for consent to be given before the contact commences. Therefore, the Explanatory Memorandum provides that the fact that the consumer initiates contact is taken to mean that they understand the nature of the contact to which they are consenting: see paragraph 5.83 of the Explanatory Memorandum.

RG 38.82 Any consent provided by a consumer still needs to satisfy the criteria at s992A(5)(d) and (e), that it be positive, voluntary and clear, and such that a reasonable person would have understood what the consumer was consenting to: see RG 38.63–RG 38.78.

RG 38.83 A consumer may raise a second or additional product of their own accord in the course of a contact. Provided this is done entirely of their own initiative, and the consent meets the criteria of being positive, voluntary, clear, and capable of being reasonably understood, then the offeror is able to make offers in respect of the second or additional product. We consider this to be consistent with the object of the regime which is to give consumers greater control over their decisions to purchase financial products: see paragraph 5.4 of the Explanatory Memorandum.

RG 38.84 However, offerors must not elicit a consumer's consent in any way, such as by asking leading questions: see paragraph 5.74 of the Explanatory Memorandum. As a breach of the hawking prohibition is an offence of strict liability, breaches may occur even where an offeror does not *intend* to elicit consent: see s992A(9).

Example 21: Subsequent product request

Olga calls her bank, Blue Sky Bank. She asks the customer service representative, Brendan, if Blue Sky Bank can issue her a credit card. Brendan offers her some different credit card options. Olga says she will consider the options Brendan presented to her.

Olga then remarks that she wants the credit card for her forthcoming holiday and that she would also like to organise some travel insurance. Brendan then discusses the bank's travel insurance offerings, and Olga provides him with the relevant information to generate a quote, which Brendan proceeds to do.

Brendan is unlikely to have breached the hawking prohibition as Olga raised the travel insurance of her own accord, in a manner that was positive, clear and voluntary.

Determining the scope of consent

RG 38.85 Under s992A(5)(a) and (b), the consent must be to contact for the purpose of offering, or requesting or inviting a consumer to ask or apply for either:

(a) the particular financial product that is the subject of the offer, request, or invitation; or

(b) a financial product reasonably within the scope of the consumer's consent.

RG 38.86 It is possible that a consumer's consent may be broad enough so as to reasonably apply to more than one product: see paragraph 5.67 of the Explanatory Memorandum.

General meaning of 'reasonably within scope'

RG 38.87 While each situation will depend upon its facts, certain products will be considered to be reasonably within the scope of the consumer's consent if:

(a) the consumer has consented to the contact for products of a particular type or with particular features, and the product is of that type or has those features;

(b) the consumer asks for a product that has a particular purpose or function and the financial product that is offered has that purpose or function; or

(c) a reasonable person would consider the financial product to be within the scope of the consumer's consent—for example when the product:

(i) covers the risks that the consumer consented to being contacted about;

(ii) has the same purpose or function as the product that the consumer consented to being contacted about (see Example 22); or

(iii) is so closely related to the product that the consumer consented to being contacted about that the consumer would reasonably expect to be offered that product.

Note: See s992A(5)(a)(ii) and s992A(5)(b)(ii), as well as paragraphs 5.65 and 5.66 of the Explanatory Memorandum.

RG 38.88 Establishing if a financial product is 'so closely related to an [initial] product that a consumer would reasonably expect to be offered it', may involve considering factors such as:

(a) whether acquisition of the additional product is appropriately mandated by the terms of the initial product;

(b) the degree to which the utilisation of the features of the initial product requires acquisition of the additional product;

(c) whether the use for which the initial product or service is commonly supplied gives rise to the need for the product;

(d) whether and to what extent the product manages financial risk arising from acquiring the initial product; and

(e) how prevalent it is for consumers who acquire the initial product to acquire the additional financial product (regardless of whether it is acquired from the same offeror as that initial product).

RG 38.89 The relative weight of these and other factors in determining whether the financial product was reasonably within scope of the consumer's consent will depend on the facts and circumstances of each case.

RG 38.90 A worked example of how some of these factors may be applied to a given situation is provided in Example 23.

Example 22: Products not reasonably within the scope of consent

Kathleen meets with a sales representative of Gold Standard Bank to enquire about setting up a fixed-term deposit account. During the meeting, the sales representative tells her that if she wants long-term financial security, she should consider applying for Gold Standard Bank's income protection insurance.

The offer of the income protection insurance breaches the hawking prohibition because it was not reasonably within the scope of Kathleen's consent, which was in relation to a term deposit. This is because a reasonable person would not consider income protection insurance to be a financial product with the same purpose or function as the fixed-term deposit account. The deposit account has the purpose and function of generating return on capital investment, which income protection insurance does not.

The sales representative could instead offer Kathleen a pamphlet with information regarding income protection insurance and explain to Kathleen the coverage and protection it provides.

Example 23: Reasonable expectation of being offered a product

Vassiliki visits a mortgage broker, Corinne, to organise a home loan so that she can buy a new home.

During the discussion, Corinne reminds Vassiliki that she will require home building insurance over the property as a term of the loan. Corinne asks Vassiliki if she has organised home building insurance yet and says she can organise some quotes and email them to Vassiliki, if she would like. Vassiliki agrees that this would be helpful. Following the meeting, Corinne emails Vassiliki a table containing a comparative list of insurance quotes.

In providing these quotes, Corinne made an offer of the insurance 'because of' the contact Vassiliki made. However, the contact in relation to the home building insurance was not unsolicited, as the offer was reasonably within the scope of Vassiliki's consent to discuss financing the purchase of the

home. Home building insurance is so closely related to the product Vassiliki consented to being contacted about, the mortgage, that a reasonable person would have expected to be offered it. This is because, in this case, the home building insurance was required by a contractual term of the mortgage, and the home building insurance helps manage the financial risk arising from the entry into the mortgage. It is also prevalent for borrowers to acquire home building insurance on the property securing the home loan.

Consent in the context of bundling or cross-selling

RG 38.91 Offerors sometimes sell or issue multiple products together in practices known as cross-selling and bundling. This can involve the offer of a discount on the usual price of a product or products (e.g. multi-policy discounts).

RG 38.92 A consumer may be offered more than one financial product during a contact if the consumer consented to being contacted about multiple products before the contact, or the consumer's consent is sufficiently broad so as to reasonably apply to more than one product: see paragraph 5.67 of the Explanatory Memorandum and Example 24.

Example 24: Offer of a cross-sold or bundled product reasonably within scope

Liam walks into the local branch of his bank and asks Ahmed, a customer services representative, about the bank's home loan offerings. They discuss the options. At the conclusion of the meeting, Ahmed provides Liam with information about—and offers him the opportunity to open—a transaction account that could be linked to the home loan as an 'off-set account'.

The offer of the transaction account is not unsolicited. Liam's consent to be contacted about home loans is sufficiently broad as to reasonably cover an off-set transaction account.

RG 38.93 A second or additional product will be within the scope of a consumer's consent if, for example, it covers the same risk, has the same purpose or function, or is so closely related to the product that the consumer consented to being contacted about that the consumer would reasonably expect to be offered the second product: see RG 38.87. Understanding the breadth of a consumer's consent in each case will depend on its circumstances, in particular, the words used by the consumer.

RG 38.94 The fact that two products *could be offered* or *often are offered* together at the point of sale does not in and of itself mean that those products are reasonably within the scope of a consumer's consent.

RG 38.95 Example 5.5 of the Explanatory Memorandum provides an example on how to assess the scope of a consumer's consent, and establish whether it is appropriate to offer multiple products:

> **Example 5.5: Products outside the scope of consent**
>
> Kayla calls Big Insurance Co and asks the sales representative, Tom, to give her a quote for third party property damage insurance for her car. Tom tells Kayla that Big Insurance Co is currently offering a discount to clients who take out car and home insurance policies as part of a package and asked Kayla if she would like a quote for home insurance as well. The offer of the insurance package is outside the scope of Kayla's request because she did not consent to contact involving offers about any product other than third party property damage insurance. Tom has therefore contravened the hawking prohibition.

RG 38.96 Where an offeror wishes to provide a discount to a consumer for acquiring or holding multiple products, or the consumer enquires about the availability of such discounts, the offeror needs to consider whether any products raised in the context of the discount conversation are within the scope of the consumer's consent. If they are not, the offeror will not be able to make an offer, request, or invitation in respect of those products.

RG 38.97 Offerors cannot rely on consent that they may have elicited in the course of explaining the discount as a basis for making offers, requests or invitations in relation to any additional products. This does not prevent an offeror from providing information about those products, so long as no offer, request or invitation in relation to additional products is made, and the consumer is left to consider whether they wish to recontact the offeror.

Example 25: Multi-policy discount

Frankie calls an insurance company, Insurance Assistance, to get a quote for comprehensive car insurance and speaks with an agent, Emma.

After receiving her quote, Frankie tells Emma that she was hoping for something cheaper and asks about the best price that Insurance Assistance can offer.

Emma asks if Frankie might be interested in a multi-policy discount and explains that if Frankie has three eligible Insurance Assistance policies, she will receive 15% off each policy.

Frankie is interested in the multi-policy discount and provides her email address.

Emma sends Frankie an email after the phone call that includes information on comprehensive car insurance, eligible Insurance Assistance policies and a brochure explaining the multi-policy discount. The email also includes Emma's contact details. Frankie ultimately decides only to take out comprehensive car insurance. Frankie may still be eligible for the multi-policy discount if she applies for additional products later.

By only providing Frankie with information, as well as time to consider her options and the freedom to re-initiate contact, Emma has not breached the hawking prohibition. If Frankie opts to contact Emma and purchase further insurance products, this contact would not be 'because of' the prior discussion of the discount.

RG 38.98 Some products offered may only be obtained together as a bundle, for example small business insurance packages (where sold to a retail consumer).

RG 38.99 We note that, in relation to the product design and distribution obligations (Part 7.8A of the Corporations Act), it is possible for an issuer to prepare a single target market determination (TMD) for a bundle of products. For example, as a result of s764(1A) and (1B), home building insurance and home contents insurance will be two separate products but may have a single TMD where they are offered as part of bundle.

RG 38.100 Whether or not bundled products are independently obtainable, or are contained in a single TMD or separate TMDs, the relevant test remains that the consumer's consent must be sufficiently broad as to reasonably apply to each of the products offered: see paragraph 5.67 of the Explanatory Memorandum. This means that the consent given by a consumer for the purposes of the hawking prohibition does not automatically extend to the whole bundle of products, even where that bundle is dealt with in a single TMD.

Note: What constitutes a distinct financial product will be for product issuers to determine based on the law relevant to their product. More information on bundling in the context of product issuers' design and distribution obligations can be found in Regulatory Guide 274 *Product design and distribution obligations* (RG 274) under 'Bundled products' in Section D.

Required consent for products with multiple features

RG 38.101 Some products offered for issue or sale may have multiple material features. In such cases, the consumer's consent must cover all of the product's features. If a feature of the product is not within the scope of the consumer's consent, the consumer must not be offered that product: see Example 26.

Example 26: Products with multiple features

Niamh meets with Velko, a sales representative at Live Long & Prosper Investments, and enquires about investment options involving shares. Velko offers Niamh a range of options, including an investment facility that provides exposure to both shares and debentures.

On the basis of Niamh's consent, Velko's offer would be reasonably within the scope of the consent and therefore not unsolicited. However, had Niamh asked about investment options that involved *only* shares, then the offer of the facility with exposure to both shares and debentures would not have been reasonably within the scope of the consent, being excluded on the basis of the consent provided. An offer in such a context would have been unsolicited, and a breach of the hawking prohibition.

Required consent for different classes of superannuation interests

RG 38.102 Under s992A(8), each class of beneficial interest in a regulated superannuation fund is considered to be a separate financial product.

RG 38.103 This means that when a consumer is offered, or invited or requested to ask or apply for, a new beneficial interest in a fund in which they already hold a different beneficial interest, we will consider the contact to have been unsolicited unless consent was given in relation to the offer or invitation for that new beneficial interest: see Example 27.

RG 38.104 If a consumer has consented to a contact about the issue or sale of superannuation generally, a superannuation trustee can discuss both MySuper and choice products: see s992A(8) and paragraph 5.68 of the Explanatory Memorandum.

RG 38.105 Consumers are unlikely to use terms like 'MySuper' or 'choice product' when consenting to contact. However, if the consumer's consent only reasonably applies to certain products, the trustee cannot make an offer, request, or invitation in relation to other products: see paragraphs 5.68 and 5.69 of the Explanatory Memorandum.

Example 27: Hawking of superannuation products

Aparna makes a call to GG Super and is put through to Lili, a customer service representative.

Aparna tells Lili that she is interested in a 'simple, low-cost' superannuation product. Of the 19 different products that GG Super offers, only two of them could reasonably be considered simple and low cost: GG MySuper and GG Growth.

While both products have similarly low administration and investment fees, the GG Growth (a choice product) has a different investment strategy.

Lili tells Aparna about both products and then asks Aparna if she would like to complete an application. Aparna agrees and ultimately decides to purchase the GG Growth offering.

Lili has not breached the hawking prohibition because she only offered Aparna products that fell within the scope of Aparna's request. If, however, Aparna had asked for the 'default' or 'standard' or 'most common' superannuation product, it is likely that Lili would have breached the hawking prohibition by offering Aparna the GG Growth option, since choice offerings cannot reasonably be considered default, standard or most common.

RG 38.106 The hawking prohibition does not prevent a superannuation trustee from using real-time communication to contact a member who is approaching retirement with information about different retirement income products, provided that the trustee does not make an offer, request or invitation to the

member: see paragraph 5.48 of the Explanatory Memorandum. Superannuation trustees are also not prevented from making offers, requests or invitation by letter or email, so long as those are not made as a result of an unsolicited real-time interaction.

Required consent for the financing of another financial product

RG 38.107 In some instances, a credit product may be offered in order to finance the consumer to purchase some other financial product. The hawking prohibition contained in s992A does not apply to credit products (except when they are also financial products).

Method of contact

RG 38.108 Under s992A(5)(f), if the consent indicated the form of contact that the consumer wants, the contact must be in that form.

RG 38.109 Contact through means other than those specified will not be covered by the consumer's consent and therefore such contact will be unsolicited. As part of ensuring that consumer consent is positive and clear, we expect an offeror to ask or clarify the form or forms of communication that the consumer wishes to receive.

RG 38.110 If a consumer wishes to be contacted through a medium not used by the offeror, the offeror may inform the consumer that they do not communicate through that medium and advise them of other media used by the offeror. This advice must not be coercive or use inducement: see RG 38.68. If the consumer does not consent to those other media, then future contact will be unsolicited: see Example 28.

Example 28: Consumer specifying forms of contact not used by offeror

Zara starts an online chat with a customer service representative at her bank about the company's investment-related product offerings. During the chat, Zara asks to be contacted about Exchange Traded Funds (ETFs) through a particular messaging app.

If the bank uses that app, then future contacts through this medium over the next six weeks about ETFs would not be unsolicited.

However, if the bank does not use the particular app as a means of official communication, it could instead advise Zara that its only outbound form of real-time communication is through a telephone call. If Zara agrees to receive the telephone call, then the subsequent telephone call would not be unsolicited.

Tracking consumer consent

RG 38.111 Under s992A(5)(g), an offeror may only rely on the consent provided by a consumer for the six-week period after the consent is given. If there is a need for a medical examination before a product is issued or sold, the consumer may agree to a longer period of consent not exceeding 12 weeks.

RG 38.112 These set time periods balance the need to allow adequate time to discuss a financial product and reach an agreement for its sale or issue, against the need to protect consumers from being contacted about products when they are no longer front of mind: see paragraph 5.89 of the Explanatory Memorandum.

RG 38.113 A consumer cannot consent to the time period being extended but can provide a new consent to be contacted. In this case, the new consent must meet all of the criteria of the original consent in order to be valid: see paragraph 5.90 of the Explanatory Memorandum.

RG 38.114 Some business models or practices involve offerors maintaining regular or ongoing contact with consumers, including to make proactive offers of products or services tailored to the consumer (for example relationship managers and insurance brokers). The time limits imposed by s992A(5)(g) apply equally to these roles.

Variation or withdrawal of consumer consent

RG 38.115 Under s992A(6), a consumer may vary or withdraw consent at any time leading up to or during a meeting, telephone call or other interaction. The variation or withdrawal may take any form, regardless of the form of consent: see also paragraph 5.84 of the Explanatory Memorandum.

RG 38.116 Any communication to the offeror or its representative that expresses a clear intention to vary or withdraw consent should be sufficient. Offerors must comply with the variation or withdrawal of consent when the identity of the person seeking the withdrawal or variation is reasonably ascertainable: see Example 29.

RG 38.117 Where a person or entity has obtained consumer consent on behalf of an offeror, as a matter of best practice, that person or entity should make available a process or system by which consumers can readily withdraw their consent to be contacted by offerors.

Example 29: Communicating withdrawal of consent

Zhang contacts his superannuation fund, Big Super, by phone to ask about their products. He gives consent to Aisha who works at Big Super to contact him.

Zhang later withdraws this consent by email using an email address that is linked to his member account with Big Super. In the email, he states that he does not want to be contacted. Aisha is able to identify that Zhang is

withdrawing the consent, despite the withdrawal being made in a different form to the form in which the consent was originally given. Big Super can therefore accept Zhang's withdrawal of consent.

If Zhang used a social media app (where his username did not assist in clearly identifying him) to post on Big Super's social media page that he did not want to be contacted, it may be difficult for Big Super to match the withdrawal to the original consent.

We would expect that Big Super would take reasonable steps in the circumstances to ascertain the poster's identity. This could include replying to the post and providing an alternative method of communication by which the consumer could provide the necessary information for Big Super to identify the consumer and match the withdrawal to the original consent.

If Zhang does not respond or his identity cannot otherwise reasonably be ascertained, it may not be possible for Big Super to determine that it is no longer able to rely on Zhang's consent.

RG 38.118 Once withdrawn or materially varied, the offeror can no longer rely on the original consent to contact the consumer: see Example 30.

Example 30: Varying consent

Prue fills out an online form on Harmony Insurance's website requesting a phone call to discuss life insurance. The following day, a Harmony Insurance sales representative calls Prue to discuss their range of products. The sales representative offers to provide a quote, but Prue declines, telling the sales representative that she is no longer interested in receiving calls, but is happy to receive offers by email. A few days later, another sales representative makes a follow-up phone call to Prue to see if she has changed her mind and offers to sell her life insurance.

Harmony Insurance should not contact Prue via telephone after she has withdrawn her consent to be contacted by this means. Harmony Insurance should ensure the withdrawal is recorded by the sales representative. Harmony Insurance may contact Prue via email as she indicated on the phone call.

RG 38.119 A variation does not restart the six-week consent period unless it amounts to a new consent.

RG 38.120 An offeror should not rely on consent if it becomes evident during the contact that the ongoing consent relied on is no longer positive, voluntary and clear. For example, the offeror should cease contact and no longer rely on the consent if it becomes evident that a consumer:

(a) has no recollection of providing consent;

(b) alleges that they did not provide consent; or

(c) expected the contact to be about a different type of product or a different topic.

Note: The contact should cease on the basis that the consent has been, in effect, withdrawn: see paragraphs 5.85 and 5.86 of the Explanatory Memorandum.

RG 38.121 When a consumer has sought to vary their consent, an offeror may wish to confirm that the consumer's consent, as varied, remains positive, voluntary and clear prior to relying on it.

Keeping records of consumer consent

RG 38.122 We expect that in practice, to comply with the hawking prohibition an offeror will need to keep records, including information regarding when, in what form, and to what extent an offeror has received consent from a consumer to contact them about the issue or sale of products. This will be true regardless of whether or not the contact was initiated by the offeror.

RG 38.123 Given that consumers can withdraw or vary their consent at any time, the maintenance of records will be necessary for offerors to demonstrate compliance with the hawking prohibition. We expect offerors to check their records where there is doubt as to whether a consent is in place or if a consent has been withdrawn or varied: see paragraph 5.86 of the Explanatory Memorandum.

RG 38.124 Examples of records offerors may need to keep include:

(a) the date on which the consent was obtained;

(b) the methods of contact allowed by the consent;

(c) the product or range of products within the scope of the consent;

(d) the circumstances in which the consent was obtained—for example, by what means the consent was obtained and any information provided to the consumer before they gave their consent;

(e) any variations to the consent made by the consumer, and the circumstances and date of the variations;

(f) any withdrawals of consent, and the date of the withdrawals;

(g) any communication made with the consumer before the consent; and

(h) any products issued or sold to the consumer during or in the course of any communication pursuant to their consent.

Note: For AFS licensees, these records would form part of the risk management systems and compliance arrangements required by s912A. For more information on AFS licensee obligations, see Regulatory Guide 104 *AFS licensing: Meeting the general obligations* (RG 104).

RG 38.125 How long these records may need to be kept will vary depending on factors such as the product term. Offerors should use their judgement to consider the nature of the product and determine whether documents should be kept for a longer period. If an offeror keeps records only for a short period of time, they may place themselves at risk of being unable to demonstrate compliance with their obligations.

E Consequences of breaching the hawking prohibition

Key points

A breach of the hawking prohibition is a strict liability offence. The maximum applicable penalty for a breach is:

- in the case of an individual, 60 penalty units or six months imprisonment (or both); or
- in the case of a body corporate, 600 penalty units: see RG 38.127–RG 38.128.

If an offeror breaches the prohibition, a consumer has the right to return the product that was acquired and receive a refund.

The way in which a product may be returned and refunded will depend on the type of financial product. However, in each case, the aim will be to compensate the consumer for amounts they paid in the acquisition and maintenance of the product: see RG 38.129–RG 38.147.

Conduct that breaches the hawking prohibition

RG 38.126 An offeror breaches the hawking prohibition if:

(a) the offeror makes an offer of, or request or invitation to apply for a financial product;

(b) the offer is made in the course of, or because of, contact with a consumer;

(c) the contact is a telephone call, meeting, or any other real-time interaction in the nature of a conversation or discussion; and

(d) the contact is made in the absence of a valid consumer consent.

Note: For general guidance on our approach to the meaning of 'because of', see RG 38.48–RG 38.56. For the meaning of 'unsolicited', see RG 38.57–RG 38.62.

General consequences of a breach

RG 38.127 Under s992A(1) and (9), a breach of the hawking prohibition is a criminal offence, and one of strict liability. The maximum penalties are:

(a) for an individual:

(i) a fine of 60 penalty units;

(ii) six months imprisonment; or

(iii) both; and

(b) for a body corporate, 600 penalty units.

Note: See Fines and penalties on the ASIC website for more information about penalties, including the value of a penalty unit.

RG 38.128 When a breach occurs, the affected consumer may also have a right to:

(a) return the product (see s992AA); or

(b) undertake civil proceedings against the offeror (see s1324).

Return of a product

RG 38.129 Under s992AA, if the hawking prohibition has been breached, a consumer has a right to return any financial product issued or sold to them and to receive a refund.

RG 38.130 We consider it good practice for offerors to include information about the right of return in their communication with consumers.

RG 38.131 It may be difficult for a consumer to identify that they have been sold or issued a product in breach of the hawking prohibition. Where a consumer makes contact to return a product, the offeror should consult their records to ascertain whether or not any offer, request or invitation was made subject to a valid consent.

When the product may be returned

RG 38.132 Under s992AA(1)(b), a consumer may exercise the right of return within one month and 14 days from the date that the product was issued or sold.

RG 38.133 However, where a statutory cooling-off period applies to a product under s1019B, then under s992AA(1)(a), the consumer can return the product and obtain a refund within one month after the expiry of the cooling-off period.

RG 38.134 The right of return does not apply to all financial products subject to the hawking prohibition: see regulation 7.8.24.

Effect of returning a product

RG 38.135 Under s992AA(2), if a financial product is returned because it was sold or issued in breach of the hawking prohibition, any legal relationship between the consumer and the issuer for that financial product will be terminated with effect from the time of return without penalty to the consumer. This does not affect any legal relationship the consumer may have with the same offeror for other products.

RG 38.136 Under s992AA(5), where a consumer exercises their right of return, and an offeror accepts the return and issues a refund, a penalty may still apply for the breach of the hawking prohibition.

Consumer contact to return products

RG 38.137 Contact by a consumer to return a product may also give rise to obligations under internal dispute resolution systems that AFS licensees are required to have under s912A. This is because that contact will likely constitute a 'complaint' because the consumer expresses dissatisfaction with the financial product and expects a response from the financial product issuer: see Regulatory Guide 271 *Internal dispute resolution* (RG 271).

RG 38.138 If a consumer seeks to return a product after the expiration of the statutory period under s992AA, the product issuer may still have obligations under their internal dispute resolution processes in respect of the handling of that contact with the consumer: see s912A and RG 271.

Refunds to consumers

Statutory refund

RG 38.139 Where a consumer returns a product under s992AA, the issuer must provide the consumer with a refund of any amounts paid for the financial product: see paragraph 5.96 of the Explanatory Memorandum. Different considerations might affect how this is done, depending on the product.

RG 38.140 We expect, consistent with offerors' approaches more broadly to remediation, that refunds made under s992AA are made in a timely manner.

Products with an investment component

RG 38.141 For products involving invested funds, such as superannuation accounts or interests in managed investment schemes, the amount to be refunded is the amount of initial and subsequent contributions or investments made into the account (excluding any withdrawals or distributions): see reg 7.8.25 of the Corporations Regulations. Offerors of such products will be responsible for

any shortfall that accrues during the refund period because of a reduction in the value of the interest.

RG 38.142 As set out in reg 7.8.23 of the Corporations Regulations, in order to exercise the right of return for a superannuation or retirement savings account, the consumer must nominate a superannuation fund, approved deposit fund or retirement savings account into which the refund money is to be paid if the money includes restricted non-preserved benefits or preserved benefits. This means that, in most cases, the consumer must hold or open another superannuation account into which the refund can be paid before the consumer can exercise their right of return. The refund may be paid into the previous superannuation fund if the member still has an account and the member nominates it. The refund may also be paid into another product in the offeror's fund if the consumer nominates that product.

Banking products

RG 38.143 For banking products, the refund should include any amounts deposited, and any fees charged by the offeror for that account for its establishment or maintenance.

Insurance products

RG 38.144 For insurance products, the consumer's right to a refund entitles them to a refund of all premiums paid.

Market-based products

RG 38.145 In the case of markets-based products, including but not limited to securities or derivatives, the consumer's right of refund entitles them to have repaid the amount initially paid for the product. Offerors of such products will be responsible for any shortfall that accrues between the date of acquisition and date of refund.

Other remediation obligations

RG 38.146 The obligation to provide consumer refunds under s992AA must be considered in the context of offerors' broader legal and equitable obligations to remediate. For example, all AFS licensees have an obligation to ensure that their financial services are provided efficiently, honestly, and fairly: see s912A(1)(a). Complying with this obligation includes AFS licensees taking responsibility for the consequences of their actions if things go wrong when financial products are sold or issued and consumers suffer loss or detriment. This may mean that AFS licensees have to remediate consumers who have suffered loss or detriment as a result of a breach of the hawking prohibition beyond merely refunding any amounts paid.

RG 38.147 In addition, where an offeror identifies that a breach of the hawking prohibition has occurred with respect to one consumer, we expect the offeror to consider whether there may be further breaches relating to the same or similar conduct or compliance failure.

Note: See Regulatory Guide 277 *Consumer remediation* (RG 277).

Appendix: Products exempt from the hawking provision as a result of ASIC legislative instrument or class order

Table 1 below sets out all products currently exempt by legislative instruments in force under the hawking regime.

Table 1: Financial products exempt from the hawking prohibition

Financial product or entity	Legislative instrument
Investor directed portfolio service (IDPS) and IDPS-like schemes	*ASIC Corporations (Platforms—IDPSs and IDPS-like Schemes) Instrument 2026/395*
Conditional cost schemes	*ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38*
Employee share schemes	*ASIC Corporations (Employee Share Schemes) Instrument 2022/1021* Note: See also Regulatory Guide 49 *Employee incentive schemes* (RG 49)
Employee entitlement schemes	*ASIC Corporations (Employee Entitlement Schemes) Instrument 2026/199*
Low value non-cash payment facilities, gift facilities, prepaid mobile facilities	*ASIC Corporations (Non-cash Payment Facilities) Instrument 2026/167*
Private horse breeding schemes	*ASIC Corporations (Horse Schemes) Instrument 2026/723*
School enrolment deposit schemes and school enrolment debentures	*ASIC Corporations (School Enrolment Deposits) Instrument 2026/709*
Charitable investment fundraisers	*ASIC Corporations (Charitable Investment Fundraising) Instrument 2026/730*
Serviced apartment and like schemes and property rental schemes	*ASIC Corporations (Serviced Apartment and Property Rental Schemes) Instrument 2026/192/192*
Managed discretionary account (MDA) providers and external MDA custodians Securities that if acquired would become client portfolio assets in relation to MDA services provided by a person that was and remains an MDA provider Market participants who provide MDA services to family members only	*ASIC Corporations (Managed Discretionary Account Services) Instrument 2026/720*
Managed investment schemes: Interests not for money	*ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107*

Financial product or entity	Legislative instrument
Factoring arrangements	*ASIC Corporations (Factoring Arrangements) Instrument 2017/794*
Mortgage investment schemes with no more than 20 investors	*ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857*
Nominee and custody services	*ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156*

Key terms

Term	Meaning in this document
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
consumer	An existing, potential, or prospective retail client
Corporations Act	*Corporations Act 2001*
Corporations Regulations	*Corporations Regulations 2001*
Explanatory Memorandum	Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020
financial product	Generally, a facility through which, or through the acquisition of which, a person does one or more of the following: • makes a financial investment (see s763B); • manages financial risk (see s763C); or • makes non-cash payments (see s763D) Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.
life insurance	A life risk insurance product as described in s764A(1)(e) of the Corporations Act
managed investment scheme	Has the meaning given in s9 of the Corporations Act
offer	An offer of a financial product for sale or issue
offeror	A person who offers, issues, or sells a financial product or who invites or requests applications in relation to a financial product
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s9 for the exact definition.

Term	Meaning in this document
personal advice	Financial product advice given or directed to a person (including by electronic means) in circumstances where: • the person giving the advice has considered one or more of the person's objectives, financial situation and needs; or • a reasonable person might expect the person giving the advice to have considered one or more of these matters Note: This is a definition in s766B(3) of the Corporations Act.
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified
reg 7.8.21A (for example)	A regulation of the Corporations Regulations (in this example numbered 7.8.22A), unless otherwise specified
representative	Means: • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee Note: This is a definition in s9 of the Corporations Act.
retail client	A client as defined in s761G and 761GA of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 36 (for example)	An ASIC regulatory guide (in this example numbered 36)
right of return	A consumer remedy that is available under s992AA of the Corporations Act that enables a consumer to return a product and receive a refund if the hawking prohibition is breached
s992A (for example)	A section of the Corporations Act (in this example numbered 992A), unless otherwise specified
SIS Act	*Superannuation Industry (Supervision) Act 1993*
superannuation trustee	A body corporate or group of individual trustees licenced by APRA under s29D of the SIS Act to operate a registrable superannuation entity (e.g. superannuation fund)
unsolicited contact	Contact between a consumer and an offeror that takes the form described by s992A(4)

Related information

Headnotes

financial products, harassment or coercion, hawking, insurance, managed investment schemes, misleading or deceptive conduct, Product Disclosure Statement, right of return, securities, superannuation, unsolicited contact

Regulatory guides

RG 36 *Licensing: Financial product advice and dealing*

RG 49 *Employee incentive schemes*

RG 104 *AFS licensing: Meeting the general obligations*

RG 175 *AFS licensing: Financial product advisers—Conduct and disclosure*

RG 234 *Advertising financial products and services (including credit)*

RG 254 *Offering securities under a disclosure document*

RG 271 *Internal dispute resolution*

RG 274 *Product design and distribution obligations*

RG 275 *The deferred sales model for add-on insurance*

RG 277 *Consumer remediation*

Legislative instruments

ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107

ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156

ASIC Corporations (Factoring Arrangements) Instrument 2017/794

ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857

ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38

ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98

ASIC Corporations (Employee Share Schemes) Instrument 2022/1021

ASIC Corporations (Non-cash Payment Facilities) 2026/167

ASIC Corporations (Serviced Apartment and Property Rental Schemes) Instrument 2026/192

ASIC Corporations (Employee Entitlement Schemes) Instrument 2026/199

ASIC Corporations (Platforms—IDPSs and IDPS-like Schemes) Instrument 2026/395

ASIC Corporations (School Enrolment Deposits) Instrument 2026/709

ASIC Corporations (Managed Discretionary Account Services) Instrument 2026/720

ASIC Corporations (Horse Schemes) Instrument 2026/723

ASIC Corporations (Charitable Investment Fundraising) Instrument 2026/730

Legislation

Australian Securities and Investments Commission Act 2001, s12CA–12CC, 12DA–12DB, 12DJ

Corporations Act 2001, Pts 7.8A and 7.9; s734, 912A, 991A, 992A, 992AA, 1019B, 1012I, 1018A, 1041E–1041H, 1324

Corporations Regulations 2001, Pt 7.1; regs 7.8.21A, 7.8.23, 7.8.25, 7.8.26

Superannuation Industry (Supervision) Act 1993, s68A

Superannuation Industry (Supervision) Regulations 1994