

ASIC CLASS ORDER [CO 11/842] EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission
Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 11/842] under paragraph 1020F(1)(c) of the *Corporations Act 2001* (the Act).

Paragraph 1020F(1)(c) of the Act provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

1. Background

Under subparagraph 1012B(3)(a)(i) of the Act, a regulated person must give a person a Product Disclosure Statement (PDS) for a financial product if the regulated person offers to issue the financial product to the person, and the financial product is to be issued to the person as a retail client. The PDS must be given at or before the time when the regulated person makes the offer.

Under paragraph 1010C(2)(a) of the Act, a reference to offering to issue a financial product includes a reference to inviting an application for the issue of the financial product.

In some circumstances, the provision of a quote for the premium on a general insurance product may be an invitation to a retail client to apply for the issue of a particular general insurance product on the terms specified in the quote, and therefore an 'offer to issue' that product. For example, where the quote is for a final premium amount calculated on the basis of detailed information provided by the client and the client can accept the quote (immediately or at a later time) by making an application for the product on the basis of the information provided to obtain the quote, the provision of the quote may be an 'offer to issue' the quoted product.

A quote that is an offer to issue a general insurance product may be given by a regulated person who is a general insurer or an intermediary that is authorised by the general insurer to make offers on its behalf. Where the regulated person is an intermediary, they may, by giving the quote, make both an 'offer to issue' the product on behalf of the insurer and an 'offer to arrange for the issue of' the product.

Quotes for general insurance products are often provided to retail clients during telephone calls, and are often requested by clients for the purpose of comparing general insurance products. There are practical difficulties in giving a PDS during a telephone call.

There are some existing legislative concessions from the PDS provisions that facilitate provisions of risk insurance products during telephone calls. In particular:

- section 1012G of the Corporations Act extends the time for giving a PDS for a risk insurance product to after the issue of the product if the client expressly instructs that they require the product to be issued immediately or within a specified time, and it would not be reasonably practicable to comply with the ordinary requirement to give a PDS while complying with that instruction; and
- subsection 1012D(9J) of the Corporations Act relieves the regulated person of the requirement to give a PDS if the client immediately declines the offer and no financial product is issued as a result of the offer.

However, ASIC considers that these provisions do not cover the situation where a quote is given to a retail client for the purpose of comparison with other general insurance products, because the client does not make an immediate decision to either decline the offer or acquire the product (and give the requisite instruction for issue of the product).

2. Purpose of the class order

The purpose of this class order is to modify the requirement to give a PDS to enable a quote for a general insurance product to be given to a retail client during a solicited telephone call where the client does not give an instruction or take action that would enable reliance by the regulated person on either subsection 1012D(9J) or section 1012G.

This will assist industry by giving greater certainty that the quote stage of the sales process can be completed during a telephone call without provision of a PDS until after the telephone call in which the quote has been given.

The class order seeks to balance the consumer protection goal of requiring provision of the PDS with industry concern about compliance costs, by applying the requirement differently depending on a decision by the client about whether the client wants a PDS to be given at this stage of the sale process.

3. Operation of the class order

This class order declares that Part 7.9 of the Corporations Act applies in relation to regulated persons as if Part 7.9 were modified to include a new section 1012GA.

New section 1012GA applies where the regulated person:

- makes an offer to issue, or an offer to arrange for the issue of, a general insurance product during a telephone call by or at the same time as giving a quote to the client; and
- has orally communicated the following information to the client:
 - if the insurance cover under the general insurance product is subject to exclusions and limitations – that the cover is subject to exclusions and limitations and that information about the exclusions and limitations is contained in a PDS for the general insurance product; and
 - that the level of cover under the general insurance product may be different to that under general insurance products available from other general insurers; and

- has asked the client whether the client would like a PDS to be given at, or as soon as practicable after, the time at which the offer is made.

Section 1012GA does not apply to a quote given in the course of, or because of, an unsolicited telephone call to the client or an offer that is made by or at the same time as giving a quote that is unsolicited.

Under section 1012GA, if, after being provided with the information specified above, the client states that they:

- want to be given a PDS – the regulated person need not give the PDS at or before the time when the offer is made, but must instead give the client the PDS as soon as practicable after that time;
- do not want to be given a PDS – the regulated person is exempt from the requirement to give a PDS.

If the client then decides, in the course of the telephone call or subsequently, to apply for the general insurance product after receiving the quote, or is issued the product, the regulated person may be required to give the PDS for the product under section 1012B (as affected by section 1012G).

4. Consultation

ASIC determined to give this relief after:

- completing public consultation through Consultation Paper 144 *Time for giving a PDS during telephone sales of general insurance products*; and
- following receipt of submissions to CP 144, completing further direct consultation with each of the organisations and persons who made submissions to CP 144 on an appropriate form of relief. ASIC directly consulted with:
 - Insurance Council of Australia (ICA) and general insurer members of the ICA;
 - National Insurance Brokers Association;
 - Consumer representative groups including: Brotherhood of St Laurence, Footscray Legal Service, Legal Aid NSW, Insurance Legal Service, National Information Centre on Retirement Investments, Legal Aid Queensland, Consumer Credit Legal Centre NSW, Consumer Action Law Centre; and
- consultation with Treasury.