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ASIC

Australian Securities & Investments Commission

REPORT 000

Response to submissions on CP 169 Term deposits that are only breakable on 31 days notice

May 2012

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 169 *Term deposits that are only breakable on 31 days notice: Proposals for relief* (CP 169) and details our responses in relation to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy.

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A Overview/Consultation process

- 1 In Consultation Paper 169 *Term deposits that are only breakable on 31 days notice: Proposals for relief* (CP 169), we consulted on proposals to use our discretionary powers to enable authorised deposit-taking institutions (ADIs) to issue term deposits that can only be broken on up to 31 days notice, while being subject to the same regulatory requirements as basic deposit products in the *Corporations Act 2001* (Corporations Act).
- 2 As basic deposit products, term deposits are a Tier 2 product for the purposes of training requirements under Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146). Term deposits are also exempted from the requirement to give a client a Product Disclosure Statement (PDS) in a recommendation, issue or sale situation,¹ and from the requirement to give a client a Statement of Advice (SOA).²
- 3 The Australian Prudential Regulation Authority (APRA) has indicated that, as a member of the Basel Committee on Banking Supervision (BCBS), it supports the Basel III reforms and the goal of promoting a more resilient banking system. APRA proposes to implement the liquidity coverage ratio (LCR) standard from 1 January 2015.³
- 4 The LCR requirement aims to ensure that ADIs maintain an adequate level of unencumbered, high-quality liquid assets (HQLA) that can be readily converted into cash to meet their liquidity needs for a 30-day period under a significantly severe liquidity stress scenario.⁴ Under the LCR, ADIs need to maintain a stock of qualifying HQLA to cover total net cash outflows over the next 30 calendar days.⁵
- 5 For the purpose of calculating the total net cash outflows under the LCR, fixed-term deposits with a residual maturity date beyond 30 days will be excluded from an ADI's cash outflow if the depositor has no legal right to withdraw the deposit within 30 days, or if early withdrawal results in a significant penalty that is materially greater than the loss of interest.⁶ If a category of term deposits does not meet these conditions, that entire category is to be treated as demand deposits and included in the categories of stable, less stable or higher run-off less stable deposits.⁷

¹ See reg 7.9.07FA of the Corporations Regulations 2001.

² See s946B(5)(a) of the Corporations Act.

³ [APRA Media Release](#)

⁴ APRA discussion paper, 'Implementing Basel III liquidity reforms in Australia', 16 November 2011, p. 15.

⁵ APRA discussion paper, 'Implementing Basel III liquidity reforms in Australia', 16 November 2011, p. 15.

⁶ APRA discussion paper, 'Implementing Basel III liquidity reforms in Australia', 16 November 2011, p. 19.

⁷ APRA discussion paper, 'Implementing Basel III liquidity reforms in Australia', 16 November 2011, p. 19.

- 6 APRA has indicated that where an ADI allows early withdrawal by the depositor in hardship situations, it will not result in the ADI being required to treat the whole term deposit category as demand deposits.⁸
- 7 Term deposits that require a minimum notice period of 31 days before being able to be withdrawn by the depositor will be recognised (i.e. excluded from the retail deposit category where cash outflow run-off rates apply in accordance with the LCR standard).
- 8 The definition of basic deposit product under s761A of the Corporations Act does not specify the period of notice that an ADI may require a depositor to give for an early withdrawal from a term deposit of up to two years. There has been no judicial consideration of the period of notice that an ADI may impose for an early withdrawal from these term deposits.
- 9 In CP 169, we consulted on our proposal to give conditional class order relief so that term deposits of up to two years that can only be broken on up to 31 days notice would be subject to the same regulatory requirements as basic deposit products in the Corporations Act.
- 10 The rationale for our proposal to provide relief was that there is significant regulatory uncertainty about whether term deposits that are only breakable on 31 days notice can satisfy the definition of ‘basic deposit product’ under the Corporations Act.
- 11 We sought feedback on whether it would be appropriate to give the proposed relief, and whether our relief should be subject to the conditions proposed in CP 169, and if so, which conditions would be appropriate for the relief.
- 12 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question raised in CP 169. We have limited this report to the key issues.
- 13 For a list of the non-confidential responses to CP 169, see the appendix. Copies of the submissions are on the [ASIC website](#) under CP 169.

Responses to consultation

- 14 We received submissions to CP 169 from 16 ADIs, industry bodies and associations, consumer representative groups, a law firm, and an annuities issuer. We are grateful to respondents for taking the time to provide us with their comments.
- 15 There was broad support for the proposal to give relief for term deposits of up to two years that are only breakable on 31 days notice, because it would

⁸ APRA discussion paper, ‘Implementing Basel III liquidity reforms in Australia’, 16 November 2011, p. 19.

provide regulatory certainty that such term deposits will be provided with the concessional regulatory treatment accorded to basic deposit products.

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The main issues raised by respondents related to whether:

- (a) the relief should also apply to term deposits of between two and five years;
- (b) ASIC should require, and prescribe, as a condition of the relief, a new product name for term deposits that are only breakable on 31 days notice, as described in proposal B2;
- (c) the relief should be subject to the condition that ADIs are required to give a verbal and/or written warning about the notice period and information about other deposit products, at the time of application, as described in proposal B3;
- (d) the relief should be subject to the condition that ADIs obtain the investor's express consent to roll over their term deposit at maturity, as described in proposal B4;
- (e) the relief should be subject to the condition that ADIs send a pre-maturity letter, at least 14 days before maturity, to disclose the information described in proposal B5; and
- (f) the relief should be subject to the condition that ADIs provide a grace period of at least 14 days, and send a post-maturity letter to investors within five days after maturity, to disclose the information described in proposal B6.

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B Relief for term deposits that are only breakable on 31 days notice

Key points

There was general support about the need for relief.

Respondents from industry submitted that the proposed relief should apply also to term deposits of between two and five years.

We consider that it is appropriate for ASIC to use its discretionary powers to provide relief to clarify the classification of term deposits of up to two years that are only breakable on 31 days notice, by enabling such term deposits to be provided with the same concessional regulatory treatment accorded to basic deposit products.

The need for relief

- 17 In CP 169, we proposed to give conditional class order relief so that term deposits of up to two years that can only be broken on up to 31 days notice would be subject to the same regulatory requirements as basic deposit products.
- 18 The definition of ‘basic deposit product’ under s761A of the Corporations Act does not specify the period of notice that an ADI may require a depositor to give for an early withdrawal from a term deposit of up to two years. There has been no judicial consideration of the period of notice that an ADI may require for withdrawal from term deposits of up to two years.
- 19 Our rationale for the proposal to give relief was that, without some form of relief provided by ASIC, there is significant regulatory uncertainty about whether term deposits of up to two years that are only breakable on 31 days notice would satisfy the definition of basic deposit product. We sought feedback on whether it would be appropriate to provide relief to address this regulatory uncertainty, by clarifying the classification of term deposits with a notice period of 31 days.
- 20 Submissions from industry and consumer representative groups were generally supportive of our proposal to provide relief, so that term deposits with a notice period of 31 days would be provided with the same concessional regulatory treatment accorded to basic deposit products as defined in the Corporations Act. Most of the respondents agreed that relief is required because there is a need for clarity about the treatment of term deposits that are only breakable on 31 days notice, due to regulatory uncertainty about the definition of basic deposit product.

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- 21 One submission from industry put forward the view that relief is not needed required for term deposits of up to two years, because the basic deposit product definition allows ADIs to have discretion about whether or not to impose a notice period for early withdrawal from these term deposits, and how long the notice period may be. However, the respondent indicated that if ASIC had a contrary view, relief may be necessary as an interim measure until the law is clarified by law reform.
- 22 The respondent stated that term deposits of up to two years that are breakable only at the ADI's discretion can fit within the definition of basic deposit product. By implication, the respondent appeared to suggest that an ADI's discretion about whether to impose a notice period for early withdrawal from term deposits of up to two years can be construed to mean that these term deposits are breakable only at the ADI's discretion.
- 23 Another respondent from industry argued that term deposits of up to two years can be unbreakable during the period of the term deposit, subject to the ADI's discretion, and still meet the definition of basic deposit product. The respondent noted that, because the Corporations Act does not specify the period of notice that an ADI may require a depositor to give for an early withdrawal from term deposits of up to two years, these term deposits are breakable only at the discretion of the ADI according to their terms and conditions.

ASIC's response

We consider that it is appropriate for ASIC to use its discretionary powers to provide relief to clarify the classification of term deposits of up to two years that are only breakable on 31 days notice, by providing such term deposits with the same concessional regulatory treatment accorded to basic deposit products.

We do not agree with the view that term deposits of up to two years that are breakable only at the ADI's discretion—and, by implication, are unbreakable—qualify as basic deposit products. We consider that, in accordance with the definition of basic deposit product under s761A of the Corporations Act, term deposits of up to two years may qualify as basic deposit products if early withdrawal by the depositor is permitted by the ADI, subject to a notice period that an ADI may impose.

Further, we consider that an ADI's discretion about whether to impose a notice period for early withdrawal from term deposits of up to two years cannot be construed to mean that these term deposits are breakable only at the ADI's discretion.

We also consider that, although the Corporations Act does not specify the notice period that an ADI may require a depositor to give for an early withdrawal for deposits of up to two years, this

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cannot be construed to mean that term deposits of up to two years are breakable only at the discretion of the ADI.

Scope of our relief

- 24 In CP 169, we proposed to limit the scope of any relief so that it would only apply to term deposits of up to two years. Our rationale for limiting the scope of relief to term deposits of up to two years was:
- (a) term deposits of up to two years are likely to make up the vast majority of the term deposit portfolios of ADIs; and
 - (b) it would be consistent with the distinction in s761A of the Corporations Act between term deposits of up to two years and term deposits of between two and five years in relation to whether ADIs can impose a notice requirement on early withdrawal.
- 25 All respondents from industry submitted that the relief should be extended to term deposits of up to five years. The respondents submitted that relief would be required for term deposits of up to five years because:
- (a) it would encourage stable funding for ADIs;
 - (b) it would benefit investors in term deposits as longer-term deposits would generate better returns for depositors;
 - (c) if relief is not provided for term deposits of up to five years with a notice period, it will result in large compliance costs for ADIs, relating to staff training and operational costs; and
 - (d) it could create the risk of ADIs not offering term deposits of more than two years.
- 26 One ADI noted that, while it supported the extension of relief to term deposits of more than two years, it was unclear what the consumer appetite for these term deposits would be, given that currently only around 3% of the ADI's retail term deposit portfolio was for term deposits of 12 months or more.
- 27 An industry body noted that around 95% of the term deposits offered by its members had term deposits of two years or less. However we understand that total deposits held for periods of between two and five years may be substantial.
- 28 Consumer representative groups expressed mixed views relating to the appropriate scope of relief. One consumer representative group submitted that the relief should be extended to term deposits of more than two years. However, two consumer representative groups were opposed to extending the relief to term deposits of more than two years, because:

- (a) a term deposit of more than two years is a significant period to invest, and it would be appropriate for the consumer to be provided with advice by a suitably qualified adviser before making such an investment; and
- (b) term deposits of more than two years are likely to comprise a minority of investments, and the existing Corporations Act distinction should be maintained.

ASIC's response

We note industry's view that relief should be extended to apply to term deposits of more than two years to achieve parity of treatment to all term deposits of up to five years.

However, our objective in providing relief is to address the uncertainty about the period of notice that an ADI may require a depositor to give for an early withdrawal from term deposits of up to two years, in accordance with the definition of basic deposit product in s761A of the Corporations Act. Therefore, our conditional relief will clarify that term deposits of up to two years that are only breakable on 31 days notice will be subject to the same concessional regulatory requirements as basic deposit products.

We consider that it is not appropriate for ASIC to give relief for term deposits of between two and five years, because the Corporations Act distinguishes between term deposits of up to two years and term deposits of between two and five years in relation to whether ADIs can impose a notice requirement on early withdrawals. This indicates that Parliament intended there to be a distinction between term deposits of up to two years, and those of between two and five years. We consider it appropriate for this issue to be addressed by Government, rather than by relief.

We have decided to give conditional class order relief so that term deposits of up to two years that are only breakable on 31 days notice are subject to the same regulatory requirements as basic deposit products.

C Conditions of relief

Key points

In CP 169, we sought feedback about whether our proposed relief should be subject to any conditions, and if so, which conditions.

Respondents from industry and consumer representative groups raised strong and divergent views regarding the proposed conditions.

We consider that, as conditions of relief, it would be appropriate to require ADIs to:

- use a prescribed specific product name (Proposal B2);
- provide a clear and prominent written warning, in application forms and terms and conditions (Proposal B3);
- obtain the investor's express consent to roll over their term deposit at maturity, at any time prior to the date of maturity (Proposal B4);
- make pre-maturity contact (Proposal B5); and
- provide a grace period and make post-maturity contact (Proposal B6).

New product name (proposal B2)

29 In CP 169, we sought feedback on whether our relief should be subject to the condition that term deposits with a 31-day notice requirement for early withdrawal use a new product name that is different to 'term deposit'. We also sought feedback on whether ASIC should prescribe a specific product name for term deposits that are only breakable on 31 days notice.

30 Our rationale for this proposed condition was to make a clear distinction between two different types of term deposits that could be offered by ADIs (the current form where the ADI does not require notice for early withdrawal, and term deposits that are only breakable on 31 days notice). A new product name could help increase consumer awareness about the two distinct types of term deposits offered by ADIs.

31 Respondents to CP 169 expressed divergent views on this issue.

32 Some industry respondents supported the proposed condition to require the use of a new product name that is different to 'term deposit'. These respondents submitted that a new product name would:

- (a) enable consumers and industry to be better informed when purchasing and advising on these term deposits;
- (b) help mitigate risks to consumers by helping them to overcome any potential product confusion and to distinguish between products, and

also allow transparency about the value of the notice period to the consumer who would be able to compare pricing between the two products; and

- (c) make it very clear to ADI staff, and clearly highlight, the difference between the two types of term deposit products.

33 Another group of industry respondents opposed the proposed condition. These respondents expressed concerns that a new product name would:

- (a) risk undermining the broad consumer knowledge and awareness of a straightforward and longstanding product, and could lead to consumer confusion;
- (b) adversely affect consumers' willingness to invest into a newly named product type; and
- (c) result in additional and unnecessary operational costs for ADIs in terms of new product development and administrative costs related to maintenance of an additional category of term deposits.

34 A majority of the consumer representative groups supported the proposed condition of a new product name. These respondents stated that it would be an effective way to ensure that consumers understand the difference between the two types of term deposits. However, one consumer representative group disagreed with the proposed condition, because introducing a new product name for these products might cause confusion for consumers.

35 Some industry submissions argued that ASIC should not *prescribe* a specific product name because:

- (a) ADIs should be allowed to use the generic product name 'term deposit', and continue to differentiate term deposit products based on marketability rather than a prescribed name; and
- (b) it could risk causing unnecessary consumer confusion as well as greater difficulty in the sales and distribution process.

36 Some industry respondents submitted that ASIC *should* prescribe a specific product name, because:

- (a) not having a prescribed name could lead to a proliferation of brand or issuer-specific term deposit names that could make product and price comparisons more difficult for consumers;
- (b) a specific product name used across the industry would ensure a clear distinction between breakable term deposits and term deposits that are only breakable on 31 days notice; and
- (c) a prescribed product name would help to clearly communicate the notice period requirement to consumers, and thereby reduce any potential consumer confusion about the notice period.

37 One industry respondent submitted that any prescribed naming requirements should only require certain words to be included in the product name, so as to still allow flexibility for ADIs to include their branding in the product name.

ASIC's response

We recognise that there are arguments for and against using a new product name for term deposits that are only breakable on 31 days notice.

However, we consider that, as a condition of our relief, it would be appropriate to require, and prescribe, a new product name. We have decided on the name '31-day notice term deposit'.

We believe that requiring, and prescribing, a new product name, would be the most effective way to ensure that term deposits that are only breakable on 31 days notice are clearly distinguished from term deposits that are breakable without notice. We think that a new product name would assist in clearly highlighting the difference between the two types of term deposits, and allow transparency about the notice period to consumers when they compare the returns offered by different term deposit products.

We are of the view that prescribing a specific name will prevent the risk of a proliferation of product names, which could make product and price comparisons more difficult for consumers, and lead to significant consumer confusion.

We consider that the name '31 Day Notice Term Deposit' is clear and descriptive of this type of term deposit. Further, it will be possible for ADIs to brand the term deposit by including the ADI name in the prescribed product name.

We intend to review this prescribed product name condition of our relief, after following the introduction and emergence of term deposits that are only breakable on 31 days notice in the deposits market.

Consumer warning (proposal B3)

38 In CP 169, we sought feedback on whether the proposed relief should be subject to the condition that, for term deposits with a 31-day notice requirement for early withdrawal, consumers are given:

- (a) a warning about the notice requirement in writing and/or verbally, if practicable, before the issue of the product; and
- (b) information about other deposit products that permit early withdrawal without prior notice.

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39 Our rationale for this proposed condition was to ensure that consumers are given a clear warning about the 31-day notice period at the time of applying for the product.

40 Some industry respondents strongly opposed the proposed condition that would require additional verbal and/or written disclosure warning about the notice period and information about other deposit products that permit early withdrawal without prior notice. These respondents submitted that:

- (a) it would be difficult and impractical for ADIs' frontline staff to provide succinct and meaningful disclosures to consumers, and this could lead to poor consumer experience;
- (b) the basic deposit product market already provides sufficient information about other deposit products available through feature comparisons and product information; and
- (c) the additional disclosure requirements are unnecessary, as ADIs are already obliged to provide clear, concise and effective disclosure before the consumer acquires a product.

41 These respondents also expressed concerns that:

- (a) all relevant terms and conditions are currently disclosed to consumers, and any new condition, such as a 31-day notice period, would be disclosed adequately in existing disclosure documents, including application forms, and terms and conditions;
- (b) implementing additional written and/or verbal disclosure would impose complex and burdensome administration, compliance and operational costs related to new disclosures and communications, new scripting, monitoring, training, legal documentation, and information technology system changes;
- (c) an additional, mandatory disclosure requirement would run counter to efforts to simplify and reduce disclosure documentation;
- (d) an additional, mandatory disclosure requirement may not be suitable for all business models where product offerings and advice models differ between ADIs; and
- (e) providing consumers that wish to open a term deposit with information about 'at-call' products would prolong the application process, and potentially confuse and frustrate the consumer.

42 Another group of industry respondents expressed some support for the proposed condition. These respondents submitted that:

- (a) investors should receive information about both the notice requirement and alternative product information, because it would decrease investor risks and also protect ADIs;
- (b) the warning should be prescribed as a uniform standard for ADIs;

- (c) because term deposits that are only breakable on 31 days notice would change the current market arrangements for consumers' term deposits, verbal disclosures could be given face to face at the time an account is opened, along with clear online content and collateral; and
- (d) information about other at-call deposit products could be provided through product comparison tables online, and, depending on the communication channel, consumers who research term deposits could be provided with information on both types of term deposits.

43 Consumer representative groups agreed that verbal and/or written warnings about the 31-day notice period should be given to consumers at the time of application. These respondents submitted that the existing disclosure documents and practices have generally not assisted consumer decision-making, and the risk posed by term deposits that are only breakable on 31 days notice will exacerbate the risk to consumers. The consumer representative groups also expressed the views that:

- (a) a warning about the notice period should be provided as a key product feature; and
- (b) in every case, a verbal and written warning should be provided about the 31-day notice period for early withdrawals, and that a copy of a signed, clear and simple acknowledgement should be kept on file by the ADI.

ASIC's response

We recognise that there are arguments for and against requiring ADIs to provide an additional warning about the notice period and disclosure about other at-call deposit products.

Based on the feedback we have received, we have decided not to require a consumer warning, as described in CP 169.

However, we consider that, as a condition of our relief, it would be appropriate to require ADIs to provide a clear and prominent written warning in application forms, and in terms and conditions:

- about the 31-day notice period;
- that other deposit products that do not require a notice period may be more suitable to the consumer's circumstances; and
- if the consumer allows the term deposit to roll over automatically at maturity, it may roll over into a term deposit with a lower interest rate.

We think that requiring ADIs to provide a clear and prominent warning about the notice period, other deposit products that do not require a notice period, and the dual pricing rollover risk will help to ensure that:

- the notice period is brought to the attention of consumers;

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- the consumer considers the suitability of the term deposit product; and
- the risk posed by dual pricing at rollover is addressed.

Investor's express consent to rollover (proposal B4)

44 In CP 169, we sought feedback on whether our relief should be subject to the condition that, for term deposits with a 31-day notice requirement for early withdrawal, ADIs obtain the investor's express consent to roll over their term deposit at maturity.

45 Our rationale for this proposed condition was that requiring ADIs to obtain the investor's express consent to roll over the term deposit could reduce or eliminate the incidence of investors rolling into and remaining in low interest rate term deposits. We considered this issue in Report 185 *Review of term deposits* (REP 185), which reviewed ADI practices relating to the marketing and disclosure of term deposits.

46 REP 185 found that some ADIs may structure their term deposits so that, unless otherwise instructed by the investor, a maturing term deposit rolls over into a new term deposit for the same term and for the interest rate that applies to that term on the date of rollover. In REP 185, we also identified the widespread existence of dual pricing (i.e. ADIs that offer both high and low interest rates on term deposits based on the term of the investment, with significant differences between these rates).

47 Our review found that, because term deposits can roll over on a default basis (unless investors take active steps), the dual pricing of term deposit interest rates creates a risk that a term deposit could roll over from a higher interest rate to a lower interest rate, and remain in the lower interest rate term deposit.

48 In CP 169, we considered that the desirability of investors providing express consent prior to a rollover is increased in circumstances where a term deposit will only be breakable on 31 days notice.

49 All of the industry respondents strongly opposed the proposed condition that would require ADIs to obtain the investor's express consent to roll over their term deposit at maturity. These respondents submitted that the proposed condition was not warranted because:

- (a) existing arrangements enable consumers to choose (either during the application process or at any time from origination) to provide instructions about how the funds are to be treated at maturity; and
- (b) rollover arrangements are communicated to consumers to allow them to make a decision both before and after maturity.

50 The industry respondents also argued that:

- (a) obtaining express consent would impose significant administration and additional operational and systems costs;
- (b) requiring ADIs to obtain express consent would be impractical because a requirement to contact the investor by telephone, or in writing, and obtain consent may be practically difficult and result in operational and system complexity;
- (c) the condition could risk undermining prior investor directions, and possibly create a disadvantage for the investor in terms of availability of products and market rates, leading to investor dissatisfaction; and
- (d) establishing default options and rollover arrangements could result in a 'set and forget' consumer approach, creating apathy towards savings.

51 However, some of the industry respondents submitted that an appropriate way for ADIs to obtain the express consent of the investor would be at the time of application. These respondents stated that this would be consistent with the current practice adopted by ADIs and would ensure simplified and streamlined processes for both consumers and ADIs.

52 All of the consumer representative groups agreed that ADIs should obtain the express consent of the investor at maturity. The consumer representative groups expressed the views that requiring ADIs to obtain express consent prior to rollover would:

- (a) ensure that a consumer is not disadvantaged by the dual pricing rollover risk; and
- (b) be particularly important for term deposits requiring 31 days notice for early withdrawal because it encourages investors to consider their liquidity requirements and other future needs and objectives.

ASIC's response

We recognise that there are arguments for and against requiring ADIs to obtain the investor's express consent to roll over their term deposit at maturity.

Based on the feedback we have received, we have decided not to proceed with the proposed condition of obtaining express consent, as described in CP 169.

However, given our findings in REP 185 about the widespread existence of dual pricing rollover risk, we consider that, if ADIs obtain the investor's express consent to roll over the term deposit, investors are more likely to make an informed decision before a rollover.

We consider that, as a condition of our relief, it would be appropriate to require ADIs to:

- obtain the investor's express consent, at any time before the date of maturity, to roll over their term deposit at maturity; and

- if the consumer elects for the term deposit to be withdrawn at maturity, the ADI must provide alternative options about where the funds will be dispersed.

We consider that requiring ADIs to obtain the investor's express consent, at any time before maturity, to roll over their term deposit at maturity, will help to minimise the dual pricing rollover risk. This approach appears to be consistent with the current practice adopted by ADIs for obtaining consent and/or instructions.

Pre-maturity letter (proposal B5)

53 In CP 169, we sought feedback on whether, as an alternative to proposal B4, our relief should be subject to the condition that, for term deposits with a 31-day notice requirement for early withdrawal, ADIs send a pre-maturity letter to investors at least 14 days before maturity to disclose:

- (a) the actual or indicative interest rate that will apply to a new term deposit if the investor allows the maturing term deposit to automatically roll over into the new term deposit;
- (b) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period;
- (c) if the actual interest rate that will apply to the new term deposit at the date of rollover cannot be disclosed:
 - (i) a prominent warning that the investor should confirm the actual interest rate on the date of rollover; and
 - (ii) information on how the investor may ascertain the actual interest rate on the date of rollover; and
- (d) the grace period that will apply when their term deposit rolls over by default.

54 The rationale for this proposed condition was that requiring ADIs to send a pre-maturity letter containing the above information would assist investors to take action and make an informed decision about their maturity options, and also help to minimise the dual pricing rollover risk before their term deposit matures.

55 Respondents to CP 169 expressed mixed views on this proposal. Some industry respondents opposed the proposal to prescribe the specific disclosure requirements in pre-maturity letters. These respondents submitted that:

- (a) prescribing the form, content and timing of pre-maturity letters would impose complex administration and significant operational costs on ADIs;
- (b) there are practical difficulties and risks associated with informing investors about applicable interest rates because rates change frequently

and can change significantly between the pre-maturity communication and the maturity date;

- (c) the existing disclosure regime already provides adequate information to consumers about what to expect at maturity and how they can provide instructions to ADIs about their funds before maturity;
- (d) ADIs should be able to identify arrangements suitable for their product offerings, business models, internal systems for setting rates and investors; and
- (e) the timing of making pre-maturity contact differs between ADIs, and ADIs should have discretion as to when to make pre-maturity contact.

56 One industry respondent agreed with our proposed condition in its form and content, and noted that this condition should not be an alternative, but could work in conjunction with the proposal of express consent. The respondent also submitted that the pre-maturity letter should be sent 21 days before maturity.

57 Another industry respondent noted that, currently, it sends a maturity letter to investors 14 days before maturity, containing all of the information described in proposal B5 in CP 169. The respondent expressed support for the continuation of this practice for term deposits with a 31-day notice period. However, the respondent noted that it was not possible in practice to provide the actual interest rate that would apply if the investor allowed the term deposit to automatically roll over.

58 Consumer representative groups strongly supported that the proposed pre-maturity letter condition in its form and content should be used in conjunction with the express consent condition under proposal B4. They submitted that:

- (a) the proposed condition would ensure that consumers were given the information to enable them to make an informed decision and, in particular, would address the risk posed by dual pricing rollover risk in an effective way; and
- (b) the use of large font and bold text would be particularly useful for consumers.

ASIC's response

We recognise that there are arguments for and against requiring ADIs to make pre-maturity contact with investors in a letter with the content proposed in proposal B5 in CP 169.

Given the concerns identified in REP 185, we consider it important for investors to be aware of the actual or indicative interest rate that will apply on their new term deposit before rollover, and to be aware of better interest rates that are available

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for term deposits of a comparable period, with sufficient time to take action if they wish to do so.

We therefore consider that it would be appropriate, if a term deposit that is only breakable on 31 days notice rolls over at maturity on a default basis, to require ADIs to send a pre-maturity letter at least 14 days before maturity containing:

- if a term deposit will roll over into a term deposit with a lower interest rate, provide information about how the investor may ascertain the actual interest rate on the date of rollover, and provide a prominent, general warning:
 - that the term deposit may roll over to a term deposit with a lower interest rate;
 - that better interest rates may be available from the same ADI for a term deposit of a comparable period; and
 - that the investor should confirm the actual interest rate on the date of rollover;
- if the actual interest rate is unknown, provide an indicative interest rate and a warning that this may be subject to change;
- disclose that a 14-day grace period will apply when their term deposit rolls over by default; and
- confirm that the investor provided consent to the ADI to roll over their term deposit.

Grace period on rollover and post-maturity letter (proposal B6)

59 In CP 169, we sought feedback on whether our relief should be subject to the condition that, for term deposits with a 31-day notice requirement for early withdrawal, ADIs:

- (a) provide a grace period to investors of at least 14 days; and
- (b) send a post-maturity letter to investors within a maximum of five days after maturity, to disclose:
 - (i) the grace period (i.e. a short period of time during which an investor can cancel the new term deposit or change to a different one without charge);
 - (ii) a prominent warning that better interest rates may be available from the same ADI for a term deposit of a comparable period; and
 - (iii) a prominent warning about any reduction in the return generated and/or fees applicable for early withdrawal.

60 The rationale for this proposed condition was that it would provide sufficient time and notice to investors to assist them in making, and acting on, an informed decision after their term deposit has rolled over, and would help to

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reduce the incidence of investors rolling over into and remaining in low interest rate term deposits that are only breakable on 31 days notice.

61 A majority of industry respondents strongly opposed the proposed condition to require ADIs to provide a grace period of at least 14 days, and send a post-maturity letter containing the specified disclosure requirements within five days after maturity.

62 These respondents expressed the views that:

- (a) currently, the length of grace period provided by ADIs differs across the industry;
- (b) the current practices adopted by ADIs provide adequate disclosure to investors regarding maturity options;
- (c) implementing a mandated grace period of 14 days and prescribing the content and timing of a post-maturity letter would result in significant administration, systems and operational costs on ADIs;
- (d) it would also risk confusing consumers; and
- (e) ADIs should have discretion to determine the length of grace period, and the content and timing of post-maturity letters.

63 One industry respondent agreed with the form, content and timing of our proposed condition in B6. The respondent noted that the post-maturity letter was necessary to outline the grace period and new terms of the account. However, the respondent submitted that the grace period should be seven days, because a 14-day grace period would undermine the objective of the 31-day notice period.

64 One ADI submitted that a grace period may undermine any advantages of the 31-day minimum notice period, because it could raise the possibility of the entire pool of deposits being treated as 'at-call' funding under the Basel III requirements.

65 Some consumer representative groups supported a grace period of 14 days. They also expressed strong support for a post-maturity letter that includes prominent warnings about low interest rates and the imposition of fees and penalties for withdrawal outside the grace period. One consumer representative group argued that, given the restrictive nature of the product, consumers should not face any penalties for an early withdrawal from this type of term deposit at any stage.

66 Another consumer representative group questioned the utility of the proposal to prominently inform consumers of a grace period after a term deposit has rolled over, because it may not be effective in ensuring that an investor's term deposit is not subject to a lower interest rate after a rollover. The respondent argued that a grace period operates similarly to a cooling-off

period that applies to unsolicited consumer agreements, and that consumers may fail to exercise their rights.

ASIC's response

We recognise that there are arguments for and against requiring ADIs to offer a grace period of at least 14 days and to send a post-maturity letter containing the information described under proposal B6 in CP 169.

In REP 185, as part of our recommendations to address the dual pricing rollover risk, we identified that it is industry best practice to provide investors with a grace period no shorter than five business days, with industry best practice at 14 days.

We consider that it would be appropriate to proceed with proposal B6, as described in CP 169.

We believe that proposal B6 would help to significantly reduce the incidence of consumers remaining in low interest rate term deposits after a rollover. We think that this is particularly important to consumers who have invested in term deposits that are only breakable on 31 days notice because:

- they could inadvertently roll over into and remain in low interest rate term deposits that require 31 days notice for an early withdrawal; and
- they are subject to the risk of having the return on their term deposit reduced and/or fees imposed for early withdrawal.

APRA has indicated to ASIC that a grace period would not result in the entire category of term deposits with 31 days notice being treated as 'at-call' deposits under Basel III requirements.

Appendix: List of non-confidential respondents

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- Abacus
 - Australian Bankers' Association Inc.
 - Australian Finance Conference
 - Australia and New Zealand Banking Group Limited
 - Challenger Limited
 - CHOICE
 - Consumer Action Law Centre
 - Financial Planning Association of Australia
 - National Information Centre on Retirement Investments Inc.
 - National Seniors Australia
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