

Our Reference: 31529/12

5 June 2014

Mr Steven Munchenberg
Chief Executive
Australian Bankers' Association
Level 3, 56 Pitt Street
Sydney NSW 2000

Dear Mr Munchenberg,

Term deposits that are only breakable on 31 days' notice

As you will be aware, ASIC has consulted on proposals for relief to enable authorised deposit-taking institutions (ADIs) to issue term deposits that can only be broken on 31 days' notice, while being subject to the same regulatory requirements as 'basic deposit products' in the *Corporations Act 2001* (Corporations Act).

This was in response to industry concerns about the need to meet liquidity requirements that are to be introduced by the Australian Prudential Regulation Authority to implement the Basel III reforms.

ASIC consulted on the proposal in *Consultation Paper 169: Term deposits that are only breakable on 31 days' notice: Proposals for relief*, and considered submissions received in response. In doing so, ASIC consulted extensively with stakeholders in seeking to develop appropriate conditions to the proposed relief, to take into account the consumer protection objectives of Chapter 7 of the Corporations Act.

Senator the Hon Mathias Cormann, Minister for Finance, and Acting Assistant Treasurer, recently notified ASIC of his intention to progress legislative reforms to amend the definition of 'basic deposit product, (in section 761A of the Corporations Act).

We understand that the Minister intends to progress law reforms to amend the definition of 'basic deposit product', and that it is envisaged that the amendments may include conditions to address any potential for consumer detriment.

In light of this intent, ASIC does not propose to issue class order relief to enable term deposits that can only be broken on up to 31 days' notice to be subject to the same regulatory requirements as basic deposit products.

ASIC has decided to issue this no-action letter under *Regulatory Guide 108: No-action letters* to provide regulatory certainty by clarifying that we do not intend to take regulatory action over term deposits of up to five years that are only breakable on 31 days' notice which are issued as basic deposit products if, in issuing the 31 day notice term deposit, the ADI meets the conditions set out in Annexure A to this letter. We anticipate that this will assist industry by allowing them to meet the APRA liquidity requirements without incurring significant compliance costs under the Corporations Act, by issuing 31 day notice term deposits as basic deposit products.

We reserve the right to take action in relation to an ADI issuing 31 day notice term deposits without ensuring that consumers are appropriately protected in line with the conditions set out in Annexure A.

Our position set out in this no-action letter has been adopted in light of our understanding of the Minister's intention to amend the law, and we propose to maintain this position until such time as the relevant amendments take effect. However, we may reconsider our position if other relevant matters change. In that case we will contact the ABA or relevant ADIs to discuss our concerns.

This no-action letter is subject to the qualifications set out below and in accordance with the terms contained in ASIC Regulatory Guide 108: *No-action letters*.

We ask that the ABA distribute this letter to its members, and ask your members to contact ASIC directly if they wish to discuss any aspect of how the letter impacts upon their particular circumstances.

QUALIFICATION

This no-action letter is granted subject to the qualifications specified below.

1. ASIC may at any time reconsider its view of the Corporations Act, legislative policy or its administrative policy and may withdraw or revise this no-action letter. In revising or acting contrary to the statements contained in this letter, ASIC will give due allowance to the consequences for any persons who have already acted in reasonable reliance on this letter.
2. This letter does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to particular conduct. Nor will it necessarily impede a Court from holding that particular conduct infringes the Corporations Act. ASIC does not represent that particular conduct will not be held to contravene the Act. Nor does it undertake to intervene in an action brought by third parties in respect of particular conduct.
3. This no-action letter is specific to the circumstances set out above and is only a statement of ASIC's intentions on the information available to it at a

particular time. Notwithstanding that this no-action letter has been issued, ASIC reserves the right to take action. This is especially so if there has been incomplete disclosure at the time the request for the no-action letter was made.

Should you wish to discuss this matter, please contact me at (03) 9280 3316 or via e-mail at tim.gough@asic.gov.au, or Emma Curtis on (02) 9911 5338, or emma.curtis@asic.gov.au.

Yours faithfully,

Tim Gough
Acting Senior Executive Leader
Deposit takers, Credit and Insurers

ANNEXURE A

Conditions

1. Depositor warning in relation to offer of 31 day notice term deposit

The ADI must, at or before the time that the ADI issues a 31 day notice term deposit to a depositor, provide the following information to the depositor:

- that if the depositor requests the funds in the term deposit to be withdrawn or transferred before the last day (*maturity date*) of the period that the funds are agreed to be deposited, the ADI has the discretion to not permit the withdrawal or transfer for up to 31 days but, in any event, not beyond the maturity date;
- that if the depositor may have a need in the future to immediately withdraw or transfer funds in the term deposit, other deposit products may be more suitable; and
- that if the depositor gives consent for the funds in the term deposit to be transferred on the day after the maturity date to another term deposit that has terms that are substantially the same, except for changes in the interest rate, the other term deposit may have a lower interest rate.

The information must be worded and presented in a clear, concise and effective manner and must be given to the depositor:

- orally, or
- in a document containing the governing terms of the product; or
- in a one page document which contains the information but nothing more.

If the ADI gives the depositor the information in a document containing the governing terms of the product, the ADI must obtain a written acknowledgement from the depositor, in immediate proximity to where the information is stated, that the depositor has read the information.

2. Express consent to roll-over

In order to roll over depositor funds upon maturity, the ADI must obtain, at any time before the first maturity date, the consent of the depositor to transfer (*roll over*) the funds to another term deposit (*new product*) that has terms that are substantially the same as the governing terms of the product.

3. Pre-maturity disclosure

Before each time it rolls over funds in accordance with the investor's consent, the ADI must give notice to the depositor, at least 5 business days before the maturity date of the product, of the following information and statements:

- (i) if the funds standing to the credit of the product will or may roll over into a new product with a lower interest rate, a statement worded and presented in a clear, concise and effective manner that:

- (A) the funds standing to the credit of the product will roll over into a new product which will or may (as the case may be) have a lower interest rate on the day after the maturity date of the product; and
 - (B) a higher interest rate may be available from the ADI for another basic deposit product with a comparable term; and
- (ii) if known, the interest rate that will apply to the new product;
 - (ii) if the interest rate is not known at the time notice is given:
 - (A) information on how and when the depositor can ascertain the interest rate for the new product, together with, if applicable, a warning that the interest rates may be subject to change; and
 - (B) the depositor should confirm the interest rate for the new product on the date funds standing to the credit of the product roll over into the new product; and
 - (iv) a statement that a grace period will begin a day after the maturity date of the product, the day the grace period will end, and a description of the depositor's ability to withdraw funds during the grace period;
 - (v) a statement that if the depositor wishes to withdraw their funds after the grace period, the ADI has the discretion to delay withdrawal of the funds for up to 31 days, but not beyond the maturity date for the new product, and (if not otherwise notified to the depositor) that the depositor may incur a fee or a reduction in the return generated for the depositor; and
 - (vi) a statement that the depositor gave consent for the funds to roll over into the new product.

4. *Grace period*

Each time funds are rolled over in accordance with the depositor's consent, the ADI must give the depositor the benefit of a period (***grace period***) of at least 7 calendar days, during which the depositor can withdraw or transfer the funds standing to the credit of the new product without incurring a fee or incurring a reduction in the return generated for the depositor, which begins on the maturity date of the product.

5. *Post maturity contact*

Each time funds are rolled over in accordance with the depositor's consent, the ADI must give notice to the depositor immediately, but by no later than one business day after the maturity date of the product of the following information and statements:

- (i) a statement that the depositor has the benefit of a grace period that started on the day after the maturity date of the product;

- (ii) information about the depositor's rights during the grace period;
- (iii) the date the grace period ends;
- (iv) the interest rate that applies to the new product;
- (v) a statement that a higher interest rate may be available from the ADI for another basic deposit product with a comparable term;
- (vi) a statement about any reduction in the return generated for the depositor and any fees applicable for withdrawal or transfer of funds standing to the credit of the new product after the expiration of the grace period; and
- (vii) a statement that if the depositor wishes to withdraw their funds after the grace period, the ADI has the discretion to delay withdrawal of the funds for up to 31 days, but not beyond the maturity date for the new product, and (if not otherwise notified to the depositor) that the depositor may incur a fee or a reduction in the return generated for the depositor.

How notice must be given

Information and statements referred to in paragraphs 1, 3 and 5:

- (a) must be worded and presented in a clear, concise and effective manner; and
- (b) must be:
 - (i) given to the depositor personally; or
 - (ii) sent to the depositor at an address (including an electronic address) or fax number nominated by the person; and
- (c) may be in printed or electronic form or, in the case of a notice under subparagraph (b)(i), may be given orally.