

## ASIC CLASS ORDER [CO 05/1070]

### EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

#### Corporations Act 2001

##### Paragraph 926A(2)(c) – Declaration

Section 926A(2)(c) of the *Corporations Act 2001* (the Act) provides that the Australian Securities and Investments Commission (ASIC) may declare that Part 7.6 of the Act (other than Divisions 4 and 8) apply in relation to a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

#### 2. Background

The Federal Government released its proposals paper *Refinements to Financial Services Regulation* on 2 May 2005. Refinement Proposal 12.2 (the "Refinement") states that ASIC will provide guidance on, and/or relief from, compliance with the authorisation requirements for agents where:

- (a) they are arranging for the issue of general insurance products of an Australian general insurer; and
- (b) the insurer accepts responsibility for the conduct of those agents.

The intended outcome of the Refinement is "to promote wide access to general insurance products for consumers, whilst ensuring that those consumers still receive the same protection as they would get in an office of an Australian general insurer."

A wide range of persons arrange for the issue of, or distribute, general insurance products. General insurance products are distributed by insurers, brokers, underwriting agents, financial planners and persons who are not traditional participants in the financial services industry,

such as, travel agents, storage and transport companies, car hirers, car dealers and real estate agents.

Under s911B of the Act a person who distributes general insurance must be appointed as an authorised representative of a licensee if:

- (a) they provide a financial services;
- (b) those financial services are provided on behalf of an Australian financial services (AFS) licensee; and
  - (c) they are not otherwise authorised to provide financial services on the AFS licensee's behalf (e.g. they are not an employee or director of the licensee) or otherwise exempted (e.g. they are not covered by the referral licensing exemptions in regulations 7.6.01(1)(e) or (ea) of the Corporations Regulations 2001 (the Regulations).

A distributor will generally provide the financial service of dealing, unless they are covered by an existing exemption, such as, the "clerks" and "cashiers" exemption in s766A(3).

## **2. Purpose of the class order**

Class Order [CO 05/1070] *General insurance distributors* gives effect to the Refinement and supports its intended outcome of promoting access to general insurance products for consumers, while maintaining consumer protection. The class order reduces some administrative processes and costs for AFS licensees. This will make it easier for AFS licensees to appoint distributors to distribute products on their behalf. Consumer protection is maintained through the imposition of disclosure requirements and the AFS' licensee's responsibility for the actions of its distributors.

## **3. The class order**

[CO 05/1070] allows Australian financial services (AFS) licensees, who are authorised to deal in general insurance products, to appoint distributors to deal in these products on their behalf without the need to appoint the distributors as authorised representatives.

The class order provides an alternative to the authorised representative regime. It does not amend or remove the current law applicable to authorised representatives. Likewise, the class order does not affect exemptions in the Act or the Regulations, such as the "clerks" and "cashiers" exemption (s766A(3) of the Act) or the referral licensing exemptions (regulations 7.6.01(1)(e) or (ea)).

*Who can be appointed as a distributor?*

An AFS licensee, who is authorised to deal in general insurance products, can appoint any person, who is not an authorised representative of the AFS licensee or prohibited from providing the relevant service by a banning order under Part 7.6 of the Act, as a distributor under the class order.

A body corporate appointed as a distributor under the class order can, with the written consent of the AFS licensee, sub-authorise other distributors. The AFS licensee may give written consent to a body corporate distributor to sub-authorise a specified individual or a specified class of individuals (the membership of which might change from time to time). A distributor who is not a body corporate cannot, in that capacity, authorise individuals to act as a distributor on behalf of the AFS licensee.

A person can act as a distributor of more than one AFS licensee. There is no requirement under the class order that an AFS licensee cross-endorse the appointment of one of its distributors by another AFS licensee in accordance with the procedure in s916C.

*What can a distributor do?*

Distributors operating under the class order can only deal; they cannot provide advice. The class order covers dealing in general insurance products and bundled consumer credit insurance products (i.e. consumer credit insurance products that include a life insurance component.)

*What obligations are imposed on the AFS licensees?*

To benefit from the proposed relief, the AFS licensee must take reasonable steps to ensure retail clients are given information about:

- (a) the availability of the AFS licensee's dispute resolution system;
- (b) the capacity in which the distributor is acting; and

(c) the remuneration received, or to be received, by the distributor.

This information can be included in the AFS licensee's Financial Services Guide (FSG), if the AFS licensee is required to provide the FSG to the retail client, or it can be included in a separate document to be given to the retail client.

An AFS licensee will be responsible for the distributors it appoints. The class order does not alter the AFS licensee's obligation to ensure its distributors are adequately trained and supervised, and to take reasonable steps to ensure distributors comply with the financial services law.

#### **4. Consultation**

On 4 August 2005 ASIC issued a consultation paper *Authorisation of general insurance arrangers*, seeking comments on proposed relief to give effect to the Refinement. ASIC received submissions on the consultation paper from five industry associations and seven insurance industry participants (which included product issuers, brokers, financial planners and underwriting agents). ASIC took these submissions into account before making [CO 05/1070]. ASIC also met with industry associations and insurance companies when developing the class order.

A Regulatory Impact Statement (RIS) was prepared for [CO 05/1070]. A copy of the RIS is attached.



**ASIC**

Australian Securities & Investments Commission

# **ASIC Class Order [CO 05/1070]**

## ***Proposed class order relief for the authorisation of distributors of general insurance products***

### **Regulation impact statement (RIS)**

**October, 2005**

## What this regulation impact statement is about

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ASIC proposes to issue class order relief to allow persons appointed by the holder of an Australian financial services (AFS) licence (licensee) to deal in general insurance products without the need to be authorised as a representative of the licensee. This Regulation Impact Statement (RIS) will explore the costs and benefits of the different options available to ASIC. The RIS recommends that ASIC issue a class order in order to promote greater access to general insurance products for consumers and regulatory certainty.

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# Issue/problem

## Background

### The Law

1. A distributor must be appointed as an authorised representative of a licensee under s911B of the *Corporations Act 2001* (Corporations Act) where:

- (a) the distributor provides financial services;
- (b) those financial services are provided on behalf of the licensee; and
- (c) the distributor is not otherwise authorised to provide financial services on the licensee's behalf (e.g. the distributor is not an employee or director of the licensee).

2. A distributor provides financial services if, among other things, the distributor deals in a financial product: s766A. 'Dealing' in a financial product includes:

- (a) issuing, applying for, acquiring, varying or disposing of a financial product, whether as principal or agent: s766C(1); and
- (b) arranging for another person to issue, apply for, acquire, vary or dispose of a financial product: s766C(2).

3. The Corporations Act and Corporations Regulations 2001 provide exemptions from the requirement to hold an AFS licence for some distributors. These exemptions include situations where the distributor's conduct is in the course of work of a kind ordinarily done by clerks and cashiers, or where the distributor merely refers the client to a licensee and discloses any benefits that they may receive for doing so: s766A(3) and reg 7.6.01(1)(e).

4. An authorised representative is appointed by written notice to provide financial services on behalf of the licensee: s916A and s916B. Licensees must comply with certain requirements when appointing authorised representatives, such as notifying ASIC of the authorised representative's appointment: s916F. Authorised representatives must also comply with conduct and disclosure provisions of the Corporations Act: Div 2 of Part 7.7 and Div 7 of Part 7.6.

## **Types of persons who are distributors of general insurance products**

5. General insurance products are distributed by a range of persons, such as insurers, brokers, underwriting agents, financial planners and persons who are not traditional participants in the financial services industry (e.g. travel agents, sports associations, strata managers, storage and transport companies, car hirers, car dealers and real estate agents).

## **What is the issue/problem being addressed?**

6. The authorised representative regime outlined in paragraphs [1-4] was introduced for consumer protection. It imposes liability for the actions and training of authorised representatives on the licensees who appoint them and requires ongoing administration by these licensees. It provides an overall system of appointment of persons to provide financial services on behalf of licensees. Licensees who appoint authorised representatives are required to notify ASIC of any appointments and changes (such as revocation and variation) of authorised representatives. Licensees incur fees each time they notify ASIC of any such appointments or changes. ASIC maintains a public register of the authorised representatives.

7. The authorised representative regime applies generally to all financial services and a wide range of financial products. A simpler regime may be more appropriate for the distribution of general insurance products because the distribution of general insurance products is limited to:

- the financial service of dealing (see paragraph [2] for a definition of "dealing"); and
- products that are generally well understood by consumers.

8. The imposition of the authorised representative regime may cause unnecessary regulatory and administrative burden for licensees who have to appoint authorised representatives for the limited purpose of distribution of general insurance products.

9. The costs incurred by a licensee in appointing an authorised representative to distribute general insurance products include the cost of notifying ASIC about any appointments made, any variations to the appointment of authorised representatives or any revocation of appointments. The fees charged by ASIC are identified in a table at paragraph [24]. There will be further costs for the administrative work accompanying any application to ASIC, though such costs are difficult to quantify, and will depend on the size and type of business. Additionally, authorised representatives must have their own Financial



Services Guide (FSG). Again, the cost of preparing and providing an FSG cannot be quantified, as this will depend on the type of service provided, as well as the type of business providing the service.

10. These costs may be burdensome in the context of distribution of general insurance products, and may deter the appointment of authorised representatives to distribute general insurance products, thereby restricting access of those products for consumers.

11. The Federal Government released its proposals paper *Refinements to Financial Services Regulation* (May 2005) on 2 May 2005. Refinement Proposal 12.2 ("Refinement") states that ASIC will provide guidance on, and/or relief from compliance with the authorisation requirements for agents who arrange general insurance ("distributors") where:

- (a) they are arranging for the issue of general insurance products of an Australian general insurer ("insurer"); and
- (b) the insurer accepts responsibility for the conduct of those agents.

12. The issue is whether ASIC should grant class order relief to allow licensees to appoint a person to deal in general insurance products without the need to appoint the person as an authorised representative.

## Objectives

13. ASIC aims to ensure that consumers receive the same level of overall protection when buying general insurance products through distributors as they would receive in dealing directly with a general insurer, while at the same time:

- (a) promoting access to general insurance products; and
- (b) avoiding unnecessary or disproportionately burdensome regulation of distributors and licensees who are authorised to deal in general insurance products.

# Options

## Option 1 – Maintain the *status quo*

14. If this option were adopted, licensees and distributors dealing in general insurance products of an Australian general insurer would be required to comply with the authorisation requirements set out in the Corporations Act. No relief would be provided to persons distributing general insurance products of an Australian general insurer on behalf of a licensee, except on a case-by-case basis.

## Option 2 – Grant class order relief to allow licensees to appoint persons to deal in general insurance products

15. If this option were adopted, ASIC would grant class order relief to licensees who are authorised to deal in general insurance products so that they are able to appoint persons to deal in general insurance products on their behalf, without having to appoint those persons as authorised representatives.

16. Under this option, the class order would allow licensees to appoint, in writing, any person to deal in general insurance products, and/or bundled general insurance products (i.e. general insurance products which include a life insurance component, such as some types of consumer credit and travel insurance). Licensees would no longer be required to notify ASIC of the appointment of, or changes to the appointment of, the distributors of general insurance products. Licensees would be responsible for the actions of persons they appoint to distribute general insurance products.

17. In order to benefit from the proposed relief, the licensee must ensure that the distributor complies with the following disclosure requirements:

- (a) The distributor must specifically draw to the client's attention the availability of a dispute resolution system of the licensee that covers complaints by the client in relation to the financial service provided, and how that system may be accessed;
- (b) If the client does not receive an FSG prepared by, or on behalf of, the licensee, the distributor must give the client information in writing about:
  - the capacity in which the distributor is acting; and

- the remuneration received, or to be received, by the distributor and how it is calculated.

Where an FSG is provided, we would expect that this information would be included in the FSG.

### **Option 3 – Grant class order relief to allow insurers to appoint persons to deal in limited general insurance products**

18. This option was proposed in ASIC's consultation paper *Authorisation of general insurance arrangers* (4 August 2005). If this option were adopted, ASIC would grant class order relief to allow general insurers (or persons authorised by general insurers) to appoint persons to arrange for the issue of certain general insurance products.

19. Under this option, the class order would allow insurers (or persons authorised by insurers) to appoint, in writing, persons to arrange for the issue of the following types of general insurance products:

- motor vehicle insurance products;
- home building insurance products;
- home contents insurance products;
- consumer credit insurance products, provided it is not a bundled product containing a life risk insurance component;
- travel insurance products;
- personal and domestic property insurance products.

20. Insurers would no longer be required to notify ASIC of the appointment of, and changes to the appointment of, the distributors of general insurance products. Insurers would be responsible for the actions of the person appointed to distribute general insurance products, whether these persons were appointed by the insurer or a person authorised by the insurer.

21. In order to benefit from the relief in this option, insurers would need to:

- establish and maintain a register of all distributors who have been engaged to act on their behalf;
- comply with disclosure requirements similar to those set out in paragraph [17]; and

- accept liability for distributors appointed by themselves or persons they have authorised to appoint distributors.

## Option 4 – Grant unconditional relief

22. If this option were adopted, ASIC would grant class order relief to licensees who are authorised to deal in general insurance products so that they are able to appoint persons to deal in general insurance products on their behalf, without having to appoint those persons as authorised representatives. This option would be much the same as the class order relief proposed in Option 2, but without the imposition of disclosure requirements set out in paragraph [17].

# Impact analysis

## Affected parties

23. The parties that would be affected by ASIC's proposals are:

- licensees who are authorised to issue and/or deal in general insurance products;

Note: As at 14 October 2005, there were 808 persons authorised to deal in general insurance products. This figure includes persons who are authorised to both issue and/or deal in general insurance products.

- persons who are appointed as authorised representatives to deal in general insurance products on behalf of licensees;

Note: For the purposes of this paper we have not specifically identified the number of people who fall into this category. There are a total of 50,616 authorised representatives, across all categories of financial services, registered with ASIC as at 14 October 2005.

- persons who are not currently authorised representatives but would deal in general insurance products on behalf of licensees if the relief were made;

Note: We do not know how many people fall into this category but consultation has led us to believe that there are some persons who are not, or will not be, appointed as authorised representatives, but would distribute general insurance products under the proposed relief. Examples of the types of people who fall into this category are the people who are not traditional participants in the financial services industry, referred to in paragraph [5].

- consumers to whom distributors provide dealing services in respect of general insurance products; and

Note: Given the demand and wide range of general insurance products, it would appear that many Australian consumers may be consumers of general insurance products, which would indicate that many consumers will be

affected by ASIC's proposals. However, it is difficult to ascertain exact figures for how many people are consumers of general insurance products.

(e) ASIC.

## Costs and benefits of each option

### Option 1 – Maintain the *status quo*

#### Costs

24. If this option were adopted industry would pay the same costs they are now paying and maintain the same compliance and monitoring systems. The costs for general insurers and other licensees include notifying ASIC of the appointment of an authorised representative. We would expect that the clerical time cost to prepare and lodge each form with ASIC would vary depending on each business and the nature of the notification. For example, time spent would include the time of the authorised representative providing the information and the persons preparing and lodging the form. The wages cost to each business will vary depending on their business cost model. The lodgement fees are set out as follows:

	Appointing authorised representative	Revoking authorised representative	Varying the details of authorised representative
Fees (electronic)	\$33	\$20	\$20
Fees (paper)	\$65	\$40	\$40
Late fees	\$65 for up to 1 month; \$270 thereafter.		

25. The cost for authorised representatives includes the production and distribution of an FSG. This will vary depending on the financial product. Time and costs could be greater depending on the complexity and publication quality of the FSG.

Note: We cannot accurately estimate the amount that would be saved by not requiring distributors to prepare and provide an FSG. However, we note that FSGs are often printed on a single sheet of double-sided A4 paper and the costs will vary between products and licensees.

26. If this option were adopted, some industry participants may not appoint persons to distribute their general insurance products because of the cost involved in authorising representatives. This cost reduces distribution channels available to general insurers and potentially constrains the expansion of the market as their products are not as

readily available to consumers and awareness may be lower as a result. This may restrict access to general insurance products for consumers, which would be disadvantageous to consumers. This may indirectly increase the costs of general insurance products for consumers.

27. Under this option, ASIC will have to process authorised representative notifications from all licensees who have representatives (other than employees and directors) dealing in general insurance products on their behalf.

## **Benefits**

28. If this option were adopted industry would have the certainty of the system they have been operating under for more than 3 years.

29. There will be no change in current costs for ASIC.

## **Option 2 – Grant class order relief to allow licensees to appoint persons to deal in general insurance products**

### **Costs**

30. If this option were adopted, those licensees who choose to operate under the class order may incur costs establishing new monitoring or compliance systems and changing existing commercial arrangements with distributors.

Industry may also have the cost of:

- establishing and maintaining the system to engage, record, train and monitor distributors and answer public enquiries; and
- negotiating, drafting and implementing a new form of commercial arrangement specific to distributors.

Note: It is difficult to quantify such costs, as they will vary depending on the size and complexity of each licensee's business and their approach to the relief.

Although the use of the relief will be optional, many licensees and issuers will have to address questions from potential distributors seeking to use the new system

31. There may be additional costs for licensees who use the relief, where they are required to provide written disclosure documents for the appointed distributor to provide to the consumer. Again, it is difficult to quantify such a cost. For example, the information could be included in less than half an A4 page, it could be provided in an

FSG or included in a PDS. Accordingly, we consider that these additional costs will be minimal.

32. ASIC would lose its current fee revenue from lodgement and amendment of authorised representative details. See the fees table in paragraph [24].

ASIC would also incur the cost of implementing new systems for:

- monitoring distributors, or
- dealing with complaints or enquiries concerning distributors.

Note: It is difficult to quantify such costs, as these would vary depending on the types of systems ASIC sought to implement.

33. If this option were adopted, there may be less protection for consumers who buy general insurance products. In particular, the chain of liability may not be as clear to consumers. The extent of the loss of consumer protection will vary depending on the general insurance product involved. Some general insurance products, specifically consumer credit and sickness and accident insurance, are regarded as more complex than others. However, this consumer protection concern is counteracted by the licensee's responsibility for the actions of the distributor, and the disclosure requirements.

## Benefits

34. Industry would not be required to pay fees to ASIC for notification of the appointment and alteration of authorised representatives. See the fees table in paragraph [24].

Note: We currently do not have information on the amount of fees generated by notifications to ASIC.

35. Distributors would not be required to prepare and provide a separate FSG, which would reduce costs for distributors and licensees. Cost savings would also extend to the ongoing costs of updating and distributing FSGs in response to changes in the products and services provided, and maintaining systems to monitor such FSG updates.

Note: We cannot accurately estimate the amount that would be saved by not requiring distributors to prepare and provide an FSG. However, we note that FSGs are often printed on a single sheet of double-sided A4 paper and the costs will vary between products and licensees.

36. Option 2 should promote wider access to general insurance products for the public, which is a benefit for consumers in the following respects:

- consumers would have a wider range of general insurance products to choose from; and

- as there would be more distributors, this would increase competition and lower prices and commissions.

37. ASIC would incur lower administration costs in administering the authorised representative register, as fewer persons will be registered as authorised representatives. Currently, in respect of authorised representatives, ASIC must maintain a public register, process notifications, answer industry and public queries, run compliance education and enforcement actions, and maintain ASIC's systems to perform these functions. As the public register and associated functions will not apply to distributors these administration costs will not apply to distributors. Further, as the number of new authorised representatives will decrease if this option were adopted, ASIC's ongoing administration costs would reduce proportionally.

### **Option 3 – Grant class order relief to allow insurers to appoint persons to deal in limited general insurance products**

#### **Costs**

38. If this option were adopted, the costs would be similar to those outlined in paragraphs [30–33].

39. In addition, this option would disadvantage licensees who are not general insurers, and would, therefore, be required to see consent from a general insurer before appointing a distributor. Further, the exclusion of sickness and accident insurance and some bundled insurance products would create uncertainty, as this requires some distributors to be authorised representatives for some general insurance products but not for others.

#### **Benefits**

40. Option 3 is consistent with the terms of the Refinement and provides greater protection than Options 2 and 4.

41. Option 3 would provide the cost benefits of Option 2 in respect of the ASIC notification fees, distributor FSG's and the associated administration costs.

### **Option 4 – Grant unconditional relief**

#### **Costs**

42. If this option were adopted, distributors would not be required to provide certain important disclosures to consumers. This would disadvantage consumers in that they would not receive information



regarding the capacity and remuneration of distributors or about the licensee's dispute resolution system.

43. This option does not give effect to the Refinement, as the Government specified that consumers should receive the same level of protection as if they purchased the general insurance products straight from the insurer.

## Benefits

44. This option would allow licensees to appoint distributors without incurring the costs of compliance with certain requirements currently applicable to disclosure and the appointment of authorised representatives.

# Consultation

45. On 4 August 2005, ASIC issued a consultation paper *Authorisation of general insurance arrangers*, seeking comments on proposed relief to give effect to the Refinement. Option 3 of this RIS embodies the relief proposed in the consultation paper.

46. ASIC received 12 submissions from industry associations, general insurance product issuers, brokers and underwriters. The responses to the consultation paper were varied. These are some examples of the responses:

- General support for the class order relief proposed.
- There was general concern that the proposed relief would give product issuers a competitive advantage over other licensees who distribute general insurance because product issuers had to consent to the appointment of distributors. ASIC has responded by proposing to grant relief to all licensees to appoint distributors and not requiring issuers to consent to appointment by other licensed distributors such as brokers.
- There was concern that the relief should not be confined to certain general insurance products. ASIC has responded by proposing to extend relief to all general insurance products, as defined in the Corporations Act.

Option 2 of this RIS was developed in response to the comments and concerns raised by industry during consultation.

## Conclusion and recommended option

47. ASIC considers that Option 2 (grant class order relief to allow licensees to appoint persons to deal in general insurance products) would be the preferable alternative. This option would:

- (a) provide the relief contemplated by the Refinement;
- (b) provide lower costs to industry in the appointment and administration of distributors; and
- (c) promote access to general insurance products.

48. Option 2 would not disadvantage consumers, as they would still receive essential disclosure, and have access to dispute resolution systems. In addition, the licensees will be liable for the actions of distributors.

49. Option 2 would reduce the costs of those involved in the issue and distribution of general insurance products in the following ways:

- (a) fees would not be payable to ASIC in respect of distributors;
- (b) distributors would not incur the costs of producing an FSG;
- (c) the increase in distributors would result in increased competition and reduce distribution costs and commissions; and
- (d) ASIC's administration costs would decrease.

50. Option 1 (maintain the *status quo*) is not preferred. This option would prevent ASIC from giving effect to the Refinement. It would also remove the opportunity for ASIC to provide options for industry to reduce administration costs associated with the distribution of general insurance products.

51. Option 3 (grant class order relief to allow insurers to appoint persons to deal in limited general insurance products) is not preferable. While this option may be similar to Option 2 (which is the preferred option), there are aspects to Option 3 that would complicate the relief proposed, especially in relation to the exclusion of sickness and accident insurance and some bundled insurance products. Granting relief as per Option 3 would create uncertainty in the industry. Option 3 would also put licensees who are distributors of general insurance products, but which are not general insurers, at a competitive disadvantage.

52. Option 4 (unconditional relief) is not considered to be a feasible option as it would result in an unacceptable reduction in consumer protection.

## Implementation and review

53. ASIC will implement the recommendations in this RIS by issuing a class order in conjunction with an information release. The information release will be posted on ASIC's website. Industry and the public are aware that new announcements are made on ASIC's website. Currently ASIC has no plans to specifically monitor the implementation of the changes.