

# ASIC Class Order [CO 14/1262]

## About this compilation

### Compilation No. 4

This is a compilation of ASIC Class Order [CO 14/1262] as in force on 28 June 2017. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

Prepared by the Australian Securities and Investments Commission.

---

### Australian Securities and Investments Commission Corporations Act 2001—Paragraphs 926A(2)(c), 951B(1)(c) and 1020F(1)(c)— Declaration

#### Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraphs 926A(2)(c), 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

#### Title

2. This instrument is ASIC Class Order [CO 14/1262].

#### Declaration

4. Parts 7.6 (other than Divisions 4 and 8), 7.7 and 7.9 of the Act apply in relation to an affected term deposit as if the definition of *basic deposit product* in section 761A of the Act were modified or varied as follows:
  - (a) omit paragraph (c), substitute:
    - “(c) both of the following are satisfied:
      - (i) there is a minimum period before which funds cannot be withdrawn or transferred from the facility without a reduction in the return generated for the depositor;
      - (ii) that period expires on or before the end of the period of 5 years starting on the day on which funds were first deposited in the facility; and”;
  - (b) omit paragraph (d), substitute:

- “(d) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor:
  - (i) without any prior notice to the ADI that makes the facility available; or
  - (ii) subject to a prior notice requirement that does not exceed a period of 31 days from the first business day after the notice is given, whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor; and”.

4A. Part 7.6 (other than Divisions 4 and 8) of the Act applies to all persons who provide financial services as if the definition of **basic banking product** in section 910A of the Act were omitted and substituted with the following definition:

“**basic banking product** means any of the following:

- (a) a basic deposit product;
- (b) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product;
- (d) a facility for providing traveller’s cheques;
- (e) any other product prescribed by regulations for the purposes of this paragraph.”.

5. Part 7.9 of the Act applies in relation to an affected term deposit as if that Part were modified or varied by inserting after subsection 1012D(7A) (as notionally inserted by regulation 7.9.07FA of the *Corporations Regulations 2001*):

“*Depositor warning in relation to offer of term deposit*

(7AA) Subsections (7AB) to (7AF) apply to an ADI that:

- (a) offers to issue a basic deposit product to which subparagraph (d)(ii) of the definition of basic deposit product in section 761A applies; and
- (b) does not give the depositor a Product Disclosure Statement for the basic deposit product because of subsection (7A).

(7AB) The ADI must, at or before the time the ADI makes the offer, give the depositor the following information in accordance with subsections (7AD) to (7AF):

- (a) that if the depositor requests the funds standing to the credit of the product to be withdrawn or transferred before the last day (**maturity date**) of the period that the funds are agreed to be deposited, a notice period applies to such requests;

- (b) the duration of the notice period and that the ADI has the discretion to delay the withdrawal or transfer until the end of the notice period (but not beyond the maturity date);
- (c) that if the depositor may have a need in the future to immediately withdraw or transfer funds standing to the credit of the product, other deposit products may be more suitable;
- (d) that if the depositor gives consent for the funds standing to the credit of the product to be transferred on the maturity date to another basic deposit product that has terms that are substantially the same as the governing terms of the product (other than the applicable interest rate), the other basic deposit product may have a lower interest rate.

*Depositor warning in relation to rollover of term deposit*

(7AC) If the ADI obtains, on or before the maturity date, the consent of the depositor to transfer (**roll over**) the funds to another basic deposit product (**new product**) that has terms (other than the applicable interest rate) that are substantially the same as the governing terms of the product, the ADI must:

- (a) each time funds are rolled over in accordance with the consent, give the depositor the benefit of a period (**grace period**) of at least 7 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 day of the maturity date of the product or on the following day; and
- (b) before each time it rolls over funds in accordance with the consent, give notice to the depositor, in accordance with subsection (7AF), at least 5 business days before the maturity date of the product (or no later than it obtains the consent if the consent is obtained less than 5 business days before the maturity date) of the following information and statements:
  - (i) if the funds standing to the credit of the product will roll over into a new product which will or may have a lower interest rate—a statement to that effect;
  - (ii) if the interest rate that will apply to the new product is known at the time notice is given—that rate;
  - (iii) if the interest rate is not known at the time notice is given—information on how and when the depositor can ascertain the interest rate for the new product;

Note: This requirement could be satisfied by a statement that the ADI will give the depositor a notice no later than one business day after the maturity date (or two business days after the maturity date if the maturity date is not a business day) that will identify

the interest rate applying to the new product: see subparagraph (c)(iii).

- (iv) a statement that a higher interest rate may be available from the ADI for another basic deposit product with a comparable term;
  - (v) a statement that there will be a grace period, the days on which the grace period will begin and end, and a description of the depositor's ability to withdraw funds during the grace period;
  - (vi) information that if the depositor wishes to withdraw or transfer their funds after the grace period, the ADI has the discretion to delay withdrawal or transfer of the funds until the end of a notice period (but not beyond the maturity date for the new product);
  - (vii) information about the duration of the notice period and a statement that the depositor may incur a fee or a reduction in the return generated for the depositor;
  - (viii) a statement that the depositor gave consent for the funds to roll over into the new product; and
- (c) each time funds are rolled over in accordance with the consent, give a notice to the depositor in accordance with subsection (7AF) by no later than one business day after the maturity date of the product (or two business days after the maturity date if the maturity date is not a business day) of the following information and statements:
- (i) a statement that the depositor has the benefit of a grace period and details of the days on which the grace period begins and ends;
  - (ii) information about the depositor's rights during the grace period;
  - (iii) the interest rate that applies to the new product;
  - (iv) a statement that a higher interest rate may be available from the ADI for another basic deposit product with a comparable term;
  - (v) information that if the depositor wishes to withdraw or transfer their funds after the grace period, the ADI has the discretion to delay withdrawal or transfer of the funds until the end of a notice period (but not beyond the maturity date for the new product);
  - (vi) information about the duration of the notice period and a statement that the depositor may incur a fee or a reduction in

the return generated for the depositor;

- (vii) information 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.

*How information and statements must be given*

(7AD) Information referred to in subsection (7AB) must be given to the depositor:

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

(7AE) If the ADI gives the depositor the information in a document referred to in paragraph (7AD)(b), 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.

(7AF) Information and statements referred to in subsection (7AB) or paragraph (7AC)(b) or (c):

- (a) must be worded and presented in a clear, concise and effective manner; and
- (b) must be:
  - (i) given to the depositor, or the depositor's agent, personally; or
  - (ii) sent to the depositor, or the depositor's agent at an address (including an electronic address) or fax number nominated by the person or the agent; and
- (c) may be in printed or electronic form or, in the case of information or statements given under subparagraph (b)(i), may be given orally; and
- (d) in the case of information or statements given under paragraph (7AC)(b) or (c) that is in electronic form, must, as far as practicable, be presented in a way that will allow the person to whom it is given to keep a copy of it so that the person can have ready access in the future.”.

**Interpretation**

6. In this instrument:

***affected term deposit*** means a deposit product that is a facility in relation to which:

- (a) the conditions in paragraphs (a), (b), (da) and (e) and subparagraph (c)(ii) of the definition of ***basic deposit product*** in section 761A of the Act (ignoring any modifications or variations to the definition notionally made by this instrument) are satisfied; and
- (b) if the period referred to in subparagraph (c)(ii) of the definition of ***basic deposit product*** in section 761A of the Act (ignoring any modifications or variations to the definition notionally made by this instrument) expires after the end of the period of 2 years starting on the day on which funds were first deposited in the facility—the condition in paragraph (d) of that definition is not satisfied; and
- (c) funds were first deposited into the facility either:
  - (i) between the date this instrument commenced and 30 June 2019; or  

Note: Sub-subparagraph (i) will be satisfied if funds are first deposited into the facility during the this period as a result of being transferred from a facility into which funds were first deposited before commencement of this instrument.
  - (ii) as a result of being transferred from another affected term deposit that has substantially the same terms as the facility (other than the applicable interest rate).

***deposit product*** has the same meaning as in section 761A of the Act.

## Notes to ASIC Class Order [CO 14/1262]

### Note 1

ASIC Class Order [CO 14/1262] (in force under s926A(2)(c), 951B(1)(c) and 1020F(1)(c) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

### Table of Instruments

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
[CO 14/1262]	22/12/2014 ( <i>see</i> F2014L01773)	22/12/2014	
No. 238, 2015	27/3/2015 ( <i>see</i> F2015L00350)	28/3/2015	-
2016/397	12/5/2016 ( <i>see</i> F2016L00789)	13/5/2016	-
2017/243	15/3/2017 ( <i>see</i> F2017L00224)	15/3/2017	-
2017/518	27/6/2017 ( <i>see</i> F2017L00758)	28/6/2017	-

### Table of Amendments

ad. = added or inserted    am. = amended    LA = *Legislation Act 2003*    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Para 3 .....	rep. s48D LA
Para 4A .....	ad. No. 238, 2015 rs. 2017/243
Para 6 .....	am. 2016/397 and 2017/518