



28 May 2008

By email: policy.submissions@asic.gov.au

Lisa Rayner
Lawyer, Retailer Investor Taskforce
Australian Securities & Investments Commission
GPO Box 9827
MELBOURNE VIC 3000

Dear Ms Rayner

Consultation Paper 93 – Facilitating online financial services disclosure

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on *Consultation Paper 93 – Facilitating online financial services disclosure* (the **consultation paper**), released by the Australian Securities and Investments Commission (**ASIC**) on 2 April 2008.

We have significant concerns about whether the proposal to provide relief to financial services providers to enable them provide disclosures online substantively deals with disclosure problems in the financial services arena. ASIC states that it wants to facilitate access to financial information in the format that investors find most useful. It is not at all clear to us that this is the objective of the proposal. Rather, it seems that the proposal is designed to reduce costs for business.

We take no issue with cost savings to business, indeed all things being equal, we support them as they ought to lead to cost savings for consumers in turn. It is, however, important that initiatives that will deliver savings to business are not 'dressed up' as enhanced information disclosure to consumers in circumstances where the proposed initiative contains no mechanism to deliver enhanced disclosure.

Consumer Action Law Centre
Level 7, 459 Little Collins Street
Melbourne Victoria 3000

Telephone 03 9670 5088
Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

Problems of disclosure in financial services

We do not propose to discuss in detail the problems consumers face when dealing with the disclosure in the financial services regime – that issue has been discussed comprehensively elsewhere.¹ However, we would like to raise the following points.

The proposal does not seem to consider consumer behaviour in the use of disclosure regimes in the financial services market. Not only are consumers highly unlikely to actually read complex and detailed disclosure documentation, other forms of disclosure, such as disclosure of conflict of interest, can have the opposite effect to that intended by raising trust rather than promoting caution.² The provision of disclosure online is not going to make it more likely that consumers read and understand disclosure documents. In fact, as outlined below, it may make them less likely to do so.

We are also concerned that the proposal is proceeding in preference to other ways of improving information provision to consumers, such as the continued use of confusing (and even misleading) claims in advertising. This phenomenon is even more problematic in relation to more complex products such as investments. The recent and high profile cases of property investment scheme collapses by Fincorp and ACR provide cases in point. Despite the fact that both groups issued prospectuses that included information about the nature of the investments and risk involved, many retirees were influenced by the advertising employed instead, which was deliberately targeted at them and portrayed the investments as safe, secure and low-risk products suitable for older people. Like the current proposal, ASIC's actions following the collapses focused on amending disclosure obligations,³ which clearly did not have a significant effect on the decisions made by the investors, in contrast with the advertising.⁴

We note that ASIC has undertaken some recent work to improve advertising in the debenture market.⁵ We strongly support this work and consider that it could usefully be expanded to other sorts of investments.

Shifting costs to consumers

As noted above, the proposal seems primarily designed to reduce the cost to business of complying with their legal obligations. If this is the objective, then ASIC should state that it is. Instead ASIC appear to be suggesting that online disclosure will improve innovation in disclosure, by making it more 'interactive, innovative and user friendly'. It is our view that such a consequence is by no means guaranteed. ASIC also states that there is a 'high level

¹ See, eg, Productivity Commission, *Inquiry Report No 45 – Review of Australia's Consumer Policy Framework*, p 259-269; Josh Fear, *Choice overload: Australians coping with financial decisions*, Australia Institute, May 2008.

² See JM Lacko and JK Pappalardo, "The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment", *Bureau of Economics Staff Report*, Washington DC: Federal Trade Commission, February 2004.

³ For example, see: D'Aloiso, T. *Statement on Australian Capital Reserve*. Australian Securities & Investments Commission, 30 May 2007.

⁴ See, for example, the transcript of the story 'Property market casualty list grows with demise of ACR' from ABC television current affairs program *The 7.30 Report*, 7 June 2007, which outlined the television advertising that was used to promote ACR to investors. See: www.abc.net.au/7.30/content/2007/s1945496.htm.

⁵ ASIC Regulatory Guide 156, *Debenture Advertising*.

of consensus on the need to facilitate electronic delivery of financial services information'. ASIC does not provide any evidence for such a consensus.

Further, the proposal will result in cost shifting to consumers. For example, if consumers are to access the disclosure documents, it is likely that they will have to incur download and printing charges. It is therefore crucial that consumers receive benefits to offset these costs. We would expect to see cost savings passed through to consumers. For example, fees and charges could be reduced to recognise the savings. Whether cost savings do in fact accrue should be monitored in order to evaluate the effectiveness of the initiative.

Consent to receiving disclosure documents online

We acknowledge that the proposal is to require investors to consent to receiving information online. Further, ASIC states that investors must be able to change their minds at any time with no cost. While we welcome this proposal, we note the nature of how the consent is given will be important and submit that it must involve a clear 'opt-in' process. For example, there is a difference between an investor specifically selecting to receive online information on the one hand and being told (along with a whole lot of other information) that online disclosures will be provided unless the consumer opts out, on the other.

We also have concerns about providers conflating 'identification' of an email address with 'nomination' of it (nomination leading to the information provider having the right to provide online disclosure). Many consumers, if pushed, will divulge an email address even if they rarely or never check it. In these circumstances, consumers would not get information sent to these addresses. 'Nomination' should require a specific consent on the part of an investor. In addition, the ability for investors to change their mind must be promoted and easily accessible, not lost in the detail of small print on a website.⁶ If the proposal is to proceed, the issue of how consumers consent and the ability of investors to change their mind should be considered further.

Lack of internet usage

Despite the increasing proportion of Australian consumers with access to computers and the internet, there remains a "digital divide" among consumers, which results from unequal access to and usage of, information and communications technologies.

Research indicates that age, geographic location, education and socioeconomic status influence consumers' access and ability to use information technologies such as the internet. For example, research by the Smith Family in 2002 showed that only 32 per cent of financially disadvantaged households had this access. This is roughly half the proportion of all households that had access.⁷ Similarly, ABS data for 2005-06 shows that only 47 per

⁶ Energy retailers are subject to a requirement to provide a product information statement online under energy legislation in Victoria. An investigation by the Consumer Utilities Advocacy Centre in 2006 found that most retailers did not provide clear links to disclosure documents on their home page and that it sometimes took up to 6 'clicks' to find the documents: CUAC Quarterly, Number 3, March 2006, available at: http://www.cuac.org.au/docs/CUACQ_no3_Mar06.pdf.

⁷ See McLaren, J. & Zappala, G. 2002. *The new economy revisited: an initial analysis of the digital divide among financially disadvantaged families*. The Smith Family, Research and Policy Team.

cent of households with an annual income less than \$40,000 have access to a home computer, compared to 95 per cent of households with an annual income \$120,000 or over.⁸

We note that due to Australia's system of compulsory superannuation, nearly all consumers are investors. Investors are not just those who are sophisticated and with access to internet and communications technologies. If online disclosure was the default, many low-income and disadvantaged consumers would be effectively denied access to information about their superannuation fund's performance. For economically disadvantaged consumers who do not own their own home, superannuation will be their major asset – any steps that would reduce their access to information would exacerbate the exclusion of these consumers from financial participation.

Scams and fraud

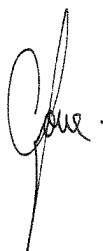
We are concerned that the proposal to use emails to notify consumers of online disclosure is vulnerable to attack by scams and fraudsters, particularly phishing scams. As ASIC would be aware, the use of fraudulent emails is an increasing problem for consumers and regulators. On the Scamwatch website, information is provided to consumers about spam or 'junk' email. Part of the advice given to consumers is to delete and not reply to messages that may be spam. We are concerned that the proposal to notify consumers of online disclosure via email could potentially confuse consumers and muddy any policy initiatives designed to protect consumers from email scams – many consumers now know to delete emails even if it looks as if it is genuine and is from their own financial institution.

We consider that the proposal to allow email notifications should not go forward. If it is to go forward, it should be accompanied by consumer protections such as those provided under the EFT Code of Conduct in relation to losses arising from scams.

Should you have any questions about this submission, please contact us on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Catriona Lowe
Co-CEO



Gerard Brody
Director – Policy & Campaigns

⁸ See Australian Bureau of Statistics. *Household Use of Information Technology, Australia, 2005-06*. Canberra: ABS.