Australian Banking Association

28 April 2020

Mr Ian Govey AM
Chair
Banking Code Compliance Committee

By email: ianrgovey@gmail.com

cc: SDavis@codecompliance.org.au

Dear Mr Govey

Issuance of scheme or dual network debit cards

The Australian Banking Association (**ABA**) wishes to notify the Banking Code Compliance Committee (**BCCC**) of the approval of our recent application to the Australian Securities and Investments Commission (**ASIC**) for relief from provisions of the *Corporations Act 2001* (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) to allow for the proactive issuance of scheme and dual network debit cards to bank customers. The list of banks participating in the proactive issuance is set out in Appendix 1.

The COVID-19 pandemic continues to increase the financial strain on Australian citizens, arising from loss of employment, the closure of businesses and other economy-wide impacts including the likely impact of the illness itself. The ABA anticipates that there will be a continued and increasing need to take urgent industry-wide action to minimise the broad, varied and rapidly evolving impact of COVID-19 and the Government legislated shutdowns to protect public health, on bank customers.

A key consideration for the ABA is ensuring the accessibility of banking services for isolated and vulnerable customers in the Australian community. There are cohorts of bank customers who use passbook accounts or customers with transaction accounts that do not have scheme or dual network debit cards. These customers are required to enter bank branches to deposit and withdraw cash and purchase their goods and services with cash.

In our view, the COVID-19 implications of business closures, decline in the acceptance of cash by retailers and the stricter rules imposed by the Federal Government with regards to self-isolation, may have serious adverse impacts on these customers who will be unable to make necessary payments for their goods and services either in person or through online shopping.

To ensure accessibility for these customers, on 10 April 2020, the ABA as part of a joint letter with the Customer Owned Banking Association (**COBA**) submitted to ASIC an application for relief from provisions of the Corporations Act and ASIC Act to ensure the prompt issuance of scheme and dual network debit cards to these customers. ASIC approved our relief application on 24 April 2020.

Proposed issuance of debit cards

Approach of participating banks

The ABA outlined five scenarios to ASIC that we sought relief for. These scenarios would allow banks to cater for the needs of these customers and account for the various business models of ABA and COBA members.

Under this initiative, our participating member banks will be able to proactively contact their passbook customers or customers without scheme debit cards to discuss options and issue a scheme or dual network debit card.

Banks will also be able to link scheme or dual network debit cards to existing accounts or create new accounts with scheme or dual network card compatibility and issue these cards to these in need customers. In some circumstances, banks will attempt to contact the customers in parallel to this, but due to the sheer size of this customer cohort, may not do so.

Our member banks are committed to fast tracking the issuance of these cards and due to the urgent need for this support, they may do so without the prior written consent of the customer. In issuing these cards, banks will ensure they include accompanying disclosure information and a letter outlining reasons for issuance.

Customer safeguards

In order to minimise any potential risks, our member banks will put in place a number of safeguards to ensure necessary protections for customers involved in the card issuance, including:

- *Card activation*: in most cases where a bank issues a scheme or dual network debit card, the customer will be required to activate the card through online means or by calling the bank before being able to use it for purchases or withdrawals
- *Limited active cards*: banks will generally limit the issuance of active cards to situations where the customer has initially contacted the bank or where the bank has proactively contacted the customer and in these circumstances, the bank will ensure this is clearly outlined to the customer in their interaction
- *Transfer requirement:* where an active card is issued and the bank has had no engagement with the customer then it will impose a requirement that at least the first money transfer from the passbook account to the debit account will need to occur by phone, and
- *Clear information:* banks will seek to provide customers with a clear understanding of the card's operation and assist them to take measures to protect against fraud and scams. One of the controls that banks may implement is to impose a daily limit on the customers' cash withdrawals.

Stakeholder engagement

The ABA has engaged with a number of important stakeholders in developing this initiative. We have closely consulted with the Council on the Ageing (**COTA**) who have expressed their support for this scheme that will specifically assist many older Australians.

We have also liaised with the Department of Home Affairs who have raised concerns with the isolation of these customers and the need for them to be able to make payments for their goods and services during this time of COVID-19 restrictions.

The ABA has also briefed our Consumer Outcomes Group, which includes representatives from Legal Aid QLD, Financial Rights Legal Centre, Consumer Action Law Centre, Financial Counselling Australia, South East Community Links, Consumer Credit Legal Service (WA) Inc

Provisions for relief

Hawking

ASIC has granted the ABA relief from the hawking provisions of s992A Corporations Act. This will allow banks the opportunity to proactively call customers, who may be on the "No Contact/No Call" register, to discuss options.

Disclosure

In some circumstances this initiative will require banks to link a scheme or dual network debit card to an established account or create a new account entirely and then proceed to issuing the Product Disclosure Statement (**PDS**) (or for persons relying on a PDS exemption, Terms and Conditions (**T&Cs**)) with the issuance of the scheme or dual network debit card. To facilitate this, ASIC granted relief from the disclosure obligations of s1012D of the Corporations Act and Reg 7.9.07FA of the Corporations Regulations.

Written consent to issue a card

The relief granted extends to s12DL of the ASIC Act to cater for scenarios where it is not practical or possible for banks to obtain written consent to issue scheme or dual network cards to these customers in a manner that is timely or convenient for customers.

For further information on the ABA's application, please see the attached ASIC's no action position letter and signed relief instrument at Appendix 2 and 3, respectively.

Banking Code of Practice

Provide terms and conditions before issuing products

Clause 24 of Chapter 11 of the Banking Code of Practice (**Banking Code**) requires signatories to provide the terms and conditions of a banking product to the customer before, or when, the contract is made with that customer. In most cases, where a bank issues a scheme or dual network debit card, the customer will be required to activate the card through online means or by phone banking. There will be some circumstances where the bank issues an active card following a conversation with the customer. Where this occurs, this may be a breach of clause 24 of the Banking Code. The ABA will work with members who intend to issue active cards to identify any breach of the Banking Code and will notify the BCCC.

Basic accounts

Chapter 16 of the Banking Code provides that banks are required to offer eligible customers basic, low or no fee accounts. Our banks are committed to this, and where a customer is eligible for such an account, they will be provided with one with a scheme or dual network debit card.

If you have any questions on our application or would like to discuss this correspondence in further detail, please contact me on 0435 510 982 or at jerome.davidson@ausbanking.org.au.

Sincerely,

Jerome Davidson

Jerome Davidson
Director, Policy
Australian Banking Association

Appendix 1 – List of participating Member Banks

Australia and New Zealand Banking Group Limited

Arab Bank Australia Limited

Bank of Queensland Limited

Bendigo and Adelaide Bank Limited

Commonwealth Bank of Australia

MyState Bank

National Australia Bank Limited

Suncorp Bank

Westpac Banking Corporation

Australian Banking Association

Appendix 2 – ASIC no action position letter – ASIC Act

Australian Securities and Investments Commission

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Level 5, 100 Market Street,
Sydney NSW 2000

Mail address for Sydney office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000
www.asic.gov.au

Ms Amanda Pullinger
Policy Director, Australian Banking Association
PO Box H218
Australia Square
NSW 1215

Our Reference: 9400/20

By E-mail:
Amanda.Pullinger@ausbanking.org.au

23 April 2020

Dear Ms Pullinger

Australian Banking Association (ABA) and Customer Owned Banking Association (COBA) – Application for a no-action letter in relation to s12DL of the *Australian Securities and Investments Commission Act 2001*

We refer to the ABA's application for a no-action letter on behalf of member banks (**Member ADIs**) of the ABA and COBA dated **10 April 2020** in relation to s12DL of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).

Based on the information provided, ASIC has decided to issue a no-action letter effective **23 April 2020**.

Relevant Legislation

Section 12DL of the ASIC Act provides that a person must not send another person a credit card or a debit card except:

- following a request in writing by the person who will be under a liability to the issuer of the card in respect of the use of the card; or
- In renewal or replacement of, or in substitution for a card of the same kind previously sent to the targeted person.

For the purposes of s12DL, a debit card means an article intended for use by a person in obtaining access to an account that is:

- held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; and
- a financial product.

Nature of the application

Based on the information provided by ABA, ASIC understands that:

1. Some cohorts of consumers (**Consumers**) use passbook accounts, or have deposit products from a Member ADI without a scheme or dual network debit card (the **Card**) from that Member ADI. Normally, these customers would enter bank branches to deposit and withdraw cash, and subsequently make purchases with cash.

2. As a result of the COVID-19 outbreak, there are concerns that Consumers may not be able to access their funds, because:

    a. Government advice and requirements, may it difficult or impossible for consumers to access bank branches and withdraw funds as cash

    b. fewer merchants may accept cash for safety reasons.

3. For this reason, Member ADIs intend to take steps to facilitate issuing Cards to Consumers. ABA and COBA have submitted several scenarios under which this would occur:

    a. **Scenario 1** – When Consumers speak to Member ADI staff, the Member ADI will mention the potential to receive a Card. If verbal consent is provided, the Member ADI would issue the Card. Disclosure information such as a PDS or terms & conditions will be provided with the Card, and steps to activate the card are clearly communicated.

    b. **Scenario 2** – Member ADIs will proactively contact passbook customers and those without scheme debit cards to discuss whether the Consumer would like a Card. Where verbal consent is provided, the Member ADI would either:
        i. issue a Card linked to the passbook account; or
        ii. issue a Card linked to an existing deposit account where a debit card has not previously been issued; or
        iii. create a new deposit account and issue a new Card.

    c. **Scenario 3** – Member ADIs will create a Card, link that Card to the Consumer's passbook account and issue that card with relevant disclosure documents. The Member ADIs will then attempt to contact the Consumer to discuss.

    d. **Scenario 4** – Member ADIs will create a Card, and link that Card to an existing account or a new deposit account. The Card will then be issued to the Consumer with relevant disclosure documents, and the Member ADIs will attempt to contact the Consumer to discuss.

    e. **Scenario 5** – In some cases, Member ADIs may not be able to contact all their Consumers. Reasons include the number of

Consumers that are Member ADI customers making a call-out process unfeasible or attempts to contact a particular Consumer not being successful. In this case, the Member ADI will do one the following without contacting the Consumer:

i. issue a Card linked to a passbook account; or
ii. Issue a Card linked to an existing account where a debit card has not previously been issued; or
iii. Create a new deposit account and issue the Card.

4. Cards will be sent with the normal protections that Member ADIs apply to debit cards they distribute. We understand that for all but two Member ADIs, this means the Cards are sent in an inactive state. In scenarios where the Cards are sent in an:
    a. Inactive state – The Consumer will be required to follow instructions to activate the card through online or phone banking. Member ADIs will have security protocols installed to identify customers when called.

    b. Active state – the Consumer will be required to contact the Member ADI through phone banking to conduct the first money transfer from the passbook account to the account to which the Card is linked.

5. It is estimated that within:
    a. ABA Member ADIs with active passbook accounts (passbook used within last 6-12 months) – 486,821 accounts;
    b. ABA Member ADIs who do not offer passbook accounts but have an active transaction account that does not have a scheme or dual network debit card linked – approximately 64,000 accounts; and
    c. COBA Member ADIs – approximately 105,000 passbook accountholders.

6. The Card is a non-cash payment facility which consumers may use to access funds to pay for essential goods and services should it be required in the event of customer isolation or extension of the lockdown due to the current COVID-19 outbreak. The Card is also a financial product under the ASIC Act.

7. Member ADIs are authorised deposit-taking institutions regulated by APRA. They have Australian financial services (**AFS**) licence that authorise them to engage in financial services in relation to non-cash payment facilities.

8. It is anticipated that Member ADIs will begin contacting consumers and distributing Cards immediately, and that this be completed as soon as possible.

Relief Sought

ABA and COBA have sought a no-action letter in relation to s12DL(1) of the ASIC Act by sending the Cards to Customers of Member ADIs (i.e. persons with passbook accounts, or existing deposit accounts but who do not hold a scheme or dual network debit card with the Member ADI).

Decision

Based on the information provided, ASIC does not currently intend to take any regulatory action in relation to non-compliance with s12DL(1) of the ASIC Act by Member ADIs (or their employees, officers and agents) regarding the distribution of the Card in response to the COVID-19 outbreak during the six month period following the date of this letter, as outlined in paragraphs 1 to 8 above.

This no-action letter applies only to the circumstances identified in this letter and is subject to the conditions listed below. ABA and COBA must inform ASIC immediately if their members no longer require this no-action letter or if one or more of their members no longer fit within the terms of this letter.

This no-action letter is also subject to the qualifications below and is provided in accordance with Regulatory Guide 108 *No-action letters*.

Conditions

1. Subject to any exemptions provided by ASIC, Member ADIs, and all other persons involved in the distribution of the Card must comply with the relevant requirements of Ch 7 of the *Corporations Act 2001*, as well as all other obligations that apply to the provision and use of the Card (including obligations under the ePayments Code and APRA-administered legislation).

2. Member ADIs that proactively contact Consumers must only distribute the Cards in response to a verbal request where the consumer:
   a. is in Scenarios 1 and 2 above;
   b. does not have already have a Card issued by the Member ADI.

   Member ADIs must take reasonable steps to advise the consumer of the timeframe in which they should expect to receive the Card and what to do if it is not received within that time.

3. Member ADIs must only distribute the Cards on an unsolicited basis to consumers who:
   a. are in Scenarios 3, 4 and 5 above;
   b. do not have already have a debit card issued by the respective Member Bank.

4. The Cards must be distributed with, at a minimum, the normal protections that the relevant Member ADI puts in place when sending debit cards through the mail.

5. Cards that are sent to Consumers must be accompanied with the following information:
    a. a description of the steps to be taken to activate and/or use the Card;
    b. documents outlining reasons for issuance and information on protection against scams and fraud.

   The information sent with the Cards must not suggest that activation or use of the Card is mandatory.

6. Member ADIs must advise Consumers (either during verbal contact or in writing with the Card) that the Consumer is not being offered credit.

Qualifications

1. ASIC may at any time reconsider its view of the ASIC Act, legislative policy or its administrative policy and may withdraw or revise this no-action letter. In revising or acting contrary to 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 no-action letter does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to that conduct or conduct of that kind. Nor will it necessarily impede a court from holding that such conduct infringes the ASIC Act. ASIC does not represent that such conduct will not be held to contravene the ASIC Act. Nor does it undertake to intervene in an action brought by third parties in respect of such conduct.

3. This no-action letter is specific to this case 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 its right to take action. This is especially so if there has been incomplete disclosure at the time the application for a no-action letter was submitted.

Yours Sincerely,

Tim Gough
Senior Executive Leader – Credit, Retail Banking & Payments
Acting Executive Director, Financial Services Group

Credit, Retail Banking and Payments

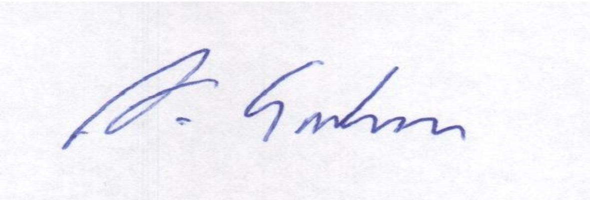
Australian Securities and Investments Commission

Appendix 3 – Relief instrument – Corporations Act

ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 24 April 2020



Anthony Graham

Contents

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Cessation

This instrument ceases to apply on 30 September 2020.

4 Authority

This instrument is made under subsection 992B(1) and paragraph 1020F(1)(c) of the *Corporations Act 2001*.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*

ADI (short for authorised deposit-taking institution) has the meaning given in section 5 of the *Banking Act 1959*.

debit card has the meaning given in subsection 12DL(5) of the ASIC Act.

eligible account holder means, in relation to an ADI, a person who holds a basic deposit product issued by the ADI, but who does not have a debit card issued by the ADI.

eligible product means:

(a) a basic deposit product; or

(b) a facility for making non-cash payments that is related to a basic deposit product.

issue situation has the same meaning as in section 1012B of the Act.

recommendation situation has the same meaning as in 1012A of the Act.

regulated person has the same meaning as in section 1011B of the Act.

Regulations mean the *Corporations Regulations 2001*.

Part 2—Exemption

6 Exemption—offering debit cards to existing account holders

(1) An ADI does not have to comply with subsection 992A(1) of the Act in relation to an offer to issue an eligible product that occurs in the course of an unsolicited meeting with an eligible account holder.

(2) The exemption in subsection (1) is only available where both of the following are satisfied:

(a) the unsolicited meeting occurs at a place where the ADI carries on business;

(b) the offer to issue the eligible product includes an offer to issue a debit card that is able to be used in relation to the eligible product.

Part 3—Declarations

7 Declarations—offering debit cards to existing account holders

Hawking

(1) Part 7.8 of the Act applies in relation to an ADI as if subsection 992A(3) were modified or varied by:

(a) in paragraph 992A(3)(a), omitting all the words after "prescribed by the regulations" and substituting "; and"; and

(b) in paragraph 992A(3)(b), before "given", inserting "if the person is not listed on the "No Contact/No Call" register in relation to the person making the contact—"; and

(c) omitting paragraph 992A(3)(c).

(2) The declaration in subsection (1) applies in relation to an offer by an ADI to issue an eligible product where the offer:

(a) is made in the course of an unsolicited telephone call to an eligible account holder; and

(b) includes an offer to issue a debit card that is able to be used in relation to the eligible product.

Note: Also see regulation 7.8.21A of the Regulations in relation to the operation of subsection 992A(3) of the Act.

Product disclosure

(3) Part 7.9 of the Act applies in relation to a regulated person as if regulation 7.9.07FA of the Regulations were modified or varied by, in notional paragraph 1012D(7A) of the Act, omitting paragraphs 1012D(7A)(d) and (e) and substituting:

"(d) the regulated person has informed the client of how further information about the amounts mentioned in paragraph (c) can be obtained, or provided the client with that information; and

(e) the regulated person has provided the client with the information described in paragraphs (b) to (d) no later than:

(i) if the client is given a debit card (within the meaning of subsection 12DL(5) of the ASIC Act) that is able to be used in relation to the eligible product—the time the client is given the debit card; and

(b) otherwise—the time the eligible product is issued to the client.".

(4) The declaration in subsection (3) applies in relation to a recommendation situation and an issue situation in relation to an eligible product where:

(a) the regulated person is an ADI that is the issuer of the eligible product; and

(b) the client in relation to the recommendation situation or issue situation is an eligible account holder; and

(c) in the case of a recommendation situation—the recommendation includes a recommendation that the eligible account holder acquire a debit card that is able to be used in relation to the eligible product; and

(d) in the case of an issue situation that is an offer to issue the eligible product—the offer includes an offer to issue a debit card that is able to be used in relation to the eligible product; and

(e) in the case of an issue situation that is the issue of the eligible product—the ADI also issues to the eligible account holder a debit card that is able to be used in relation to the eligible product.

(5) Part 7.9 of the Act applies in relation to a regulated person as if the provisions of the Part were modified or varied as follows:

(a) in subsection 1012A(4), omit "and 1014E", substitute ", 1012GB and 1014E";

(b) in subsection 1012B(5), omit "and 1014E", substitute ", 1012GB and 1014E";

(c) before section 1012H, insert the following:

"**1012GB Product Disclosure Statement may sometimes be provided later in relation to offers and issues of debit cards**

(1) This section applies in relation to a recommendation situation and an issue situation in relation to an eligible product where:

(a) the regulated person is an ADI that is the issuer of the eligible product; and

(b) the client in relation to the recommendation situation or issue situation is an eligible account holder; and

(c) in the case of a recommendation situation—the recommendation includes a recommendation that the eligible account holder acquire a debit card that is able to be used in relation to the eligible product; and

(d) in the case of an issue situation that is an offer to issue the eligible product—the offer includes an offer to issue a debit card that is able to be used in relation to the eligible product; and

(e) in the case of an issue situation that is the issue of the eligible product—the ADI also issues to the eligible account holder a debit card that is able to be used in relation to the eligible product; and

(f) the regulated person is required to give the client a Product Disclosure Statement for the eligible product.

Note: The regulated person will not have to give the client a Product Disclosure Statement if subsection 1012D(7A) (as notionally inserted by regulation 7.9.07FA of the *Corporations Regulations 2001*) applies.

(2) The regulated person need not give the client a Product Disclosure Statement for the eligible product at or before the time when it would otherwise be required to be given.

The regulated person must comply with subsection (3) instead.

(3) If the regulated person issues the eligible product to the client, the regulated person must give the client a Product Disclosure Statement not later than:

(a) if the client is given a debit card that is able to be used in relation to the eligible product—the time the client is given the debit card; and

(b) otherwise—the time the eligible product is issued to the client.".

Note: A Product Disclosure Statement could be provided for a facility for making non-cash payments that is related to either a new basic deposit product or an existing basic deposit product.

(4) In this section:

ADI (short for authorised deposit-taking institution) has the meaning given in section 5 of the *Banking Act 1959*.

debit card has the meaning given in subsection 12DL(5) of the ASIC Act.

eligible account holder means, in relation to an ADI, a person who holds a basic deposit product issued by the ADI, but who does not have a debit card issued by the ADI.

eligible product means:

(a) a basic deposit product; or

(b) a facility for making non-cash payments that is related to a basic deposit product.”.