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ASIC releases Consultation Paper 316 – Using the product intervention power: Short term credit

ASIC has requested consultation regarding the usage of its product intervention power.

On 9 July 2019, ASIC released Consultation Paper 316 (**CP 316**) which outlines ASIC's proposal to use their product intervention power as outlined in Pt 7.9A of the *Corporations Act 2001* in relation to short term credit. This would be ASIC's first use of the power since the legislation was enacted and is intended to address the significant consumer detriment arising from some short term lending models.[1]

ASIC proposes to legislate the product intervention order as per s 1023D(3) of the *Corporations Act 2001* to possess the ability to "intervene where financial and credit products have resulted in or are likely to result in significant consumer detriment".[2] This will allow ASIC to directly interfere and respond to harms in the financial sector. The Consultation Paper considers three options to combat consumer detriment:

1. the use of the product intervention power to prohibit short term lending models benefitting from short term credit exemptions which is ASIC's preferred option;

2. the use of alternative products of action through warning messages; and

3. the 'status quo' option where there would be no change.

The first option sees ASIC conducting an industry-wide intervention utilising their legislative instrument to prohibit credit providers and associates from providing short term credit and charging for additional or collateral services.[3] Proceeding with the first option will not extend to all consumer protections addressed under the *National Consumer Credit Protection Act 2009* (**NCCP Act**). Rather, it will be directed at preventing charging fees beyond the permitted parameters under the short term credit exemption.

ASIC is targeting the intervention against short term credit lenders such as Cigno Loans and their associated 'choice lender' entity Gold Silver Standards Finance (**GSSF**), hoping the proposed intervention will force them to abandon their current lending models.[4] Cigno Loans has been targeted as they have been found to use "tricky business models to avoid the law"[5] hence, not being subject to legislation which caps the interest amount charged to consumers.

Hence, ASIC proposes the first option will produce the best outcomes for consumers as it will hinder short term lending models charging in excess of their cost restrictions and protect vulnerable consumers from harm caused by them.[6] Furthermore, if proceeding with this option, ASIC intends to monitor the proposed intervention order's impact on the short term credit market and see if businesses will require further intervention than the initial order.[7]

ASIC's proposed second option encourages short term lending models as utilised by Cigno and GSSF to seek alternative products of action. These include visiting financial counsellors and promoting alternatives such as "Centrelink advances, utility hardship programs, and No Interest Loan Schemes (**NILS**)".[8] ASIC would utilise their product intervention power to ensure providers of short term credit are notifying them as to which alternative they intend to adopt. Option 2 obliges credit providers to provide a "concise high impact notice".[9] This would list alternatives available to the consumer before entering into a contract and where a consumer applies online, similar information would need be to displayed to the consumer before they can start their application.[10] ASIC believes option 2 will not be as effective as a solution compared to option 1 because warning statements are a form of disclosure and disclosure is limited in its ability to be an effective tool to guide consumers to make good decisions.[11]

Option 3 is the maintenance of the current situation whereby ASIC does not take any regulatory action to address short term lending model issues.[12]ASIC believes option 3 will not be as effective as the first due to three factors.[13] Firstly, Cigno and GSSF would be allowed to continue using their current short term lending model which is causing consumers detriment. Secondly, other related credit service providers may adopt the short term lending model or a model that is similar which would cause further harm to consumers. Lastly, consumers that continue to take a loan through the short term lending model may find their financial position worsened as a result of expensive fees and loans which they can not repay.

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[1] ASIC, 'Consultation Paper 316 – Using the product intervention power: Short term credit', consultation paper, 9 July 2019, https://download.asic.gov.au/media/5197542/cp316-published-9-july-2019.pdf [5].

[2] ASIC, '19-177MR ASIC consults on proposal to intervene to stop consumer harm in short term credit', media release, 9 July
2019, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-177mr-asic-consults-on-proposal-to-intervene-to-stop-consumer-harm-in-short-term-credit/.

[3] CP 316, [10].

[4] CP 316, [15].

[5] Consumer Action Law Centre, 'Consumer Action supports ASIC use of new powers to tackle predatory credit agents such as Cigno', media release, 9 July 2019, https://consumeraction.org.au/20190709-asic-pips-payday-loans/.

[6] CP 316, [10].

[7] Ibid.

[8] CP 316, [24].

[9] CP 316, [25].

[10] Ibid.

[11] Ibid.

[12] CP 316, [26].

[13] Ibid.