



UNDERWRITING AGENCIES COUNCIL

23<sup>rd</sup> October 2015

Corporations and Schemes Unit (CSU)  
Financial System and Services Division  
The Treasury  
100 Market Street  
SYDNEY NSW 2000

Sent by email to [asicfunding@treasury.gov.au](mailto:asicfunding@treasury.gov.au) 6pages

**Re: Proposed Industry Funding Model for the Australian Securities and Investments Commission**

I refer to our initial response to receipt of the initial proposition paper dated 9<sup>th</sup> October and then to the subsequent phone conference on Monday 19<sup>th</sup> October organised by Maria Hadisutanto.

Following on from that phone conference you requested that we provide a submission to you by today's date summarising our industry position outlined in that conference.

This we have done and now forward that submission as part of this letter to you and look forward to receipt of your further communication or comments.

Yours faithfully



William Legge  
General Manager

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The Underwriting Agencies Council makes the following submissions in response to the Proposed Industry Funding Model for the Australian Securities and Investments Commission.

## **1. Background**

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- 1.1. UAC is an industry association with almost 100 Australian-based members representing the vast majority of Australian underwriting agencies.
- 1.2. Underwriting agencies manage insurance transactions on behalf of insurers acting as their agents pursuant to agency agreements.
- 1.3. UAC members act as agents for Australian and overseas insurers and Lloyds of London.
- 1.4. Underwriting agencies are appointed by insurers to issue policies and in some cases to pay claims on their behalf.
- 1.5. UAC members play a unique role in the placement of insurance in Australia and are involved in the placement of insurance attracting more than \$2.5 billion of insurance premiums spent by Australian businesses and consumers annually.
- 1.6. An underwriting agency predominantly transacts business with insurance brokers who act for an intending insured.
- 1.7. The Australian general insurance industry is regulated by the Australian Prudential Regulation Authority (APRA) under the Insurance Act 1973.
- 1.8. APRA has the authority to set prudential standards for the general insurance industry. APRA has developed a detailed framework of prudential standards as well as prudential practice guides for the general insurance industry.
- 1.9. The Act and the prudential standards determined by APRA under the Act:
  - (a) restrict who can carry on insurance business in Australia by requiring general insurers, and the directors and senior management of general insurers, to meet certain suitability requirements; and
  - (b) imposing primary responsibility for protecting the interests of policyholders on the directors and senior management of general insurers; and
  - (c) imposing on general insurers requirements to promote prudent management of their insurance business (including requirements concerning capital adequacy, the valuation of liabilities, reinsurance arrangements and the effectiveness of risk management strategies and techniques); and

- (d) providing for the prudential supervision of general insurers by APRA; and
- (e) providing for judicial management of general insurers whose continuance may be threatened by unsatisfactory management or an unsatisfactory financial position, so as to protect the interests of policyholders and financial system stability in Australia; and
- (f) providing for policyholders, who have valid claims connected with certain policies issued by certain general insurers that are under judicial management and that APRA believes are insolvent, to be paid by APRA the amounts to which the policyholders are entitled before they would receive payment in winding up of the general insurers

1.10. "Insurance Business " is defined in section 3 of the Act to mean the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include:

- (a) life insurance business; or
- (b) accident insurance business undertaken solely in connexion with life insurance business; or
- (c) pecuniary loss insurance business carried on solely in the course of carrying on banking business and for the purposes of that business by an ADI; or
- (d) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants; or
- (e) business in relation to the benefits provided for its members or their dependants by an association of employees or of employees and other persons that is registered as an organisation, or recognised, under the Fair Work (Registered Organisations) Act 2009 ; or
- (f) business in relation to a scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or an employer's employees or by both, wholly through an organization established solely for that purpose by the employer or the employer's employees or by both; or
- (g) business in relation to a scheme or arrangement for the provision of benefits consisting of:
  - (i) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or
  - (ii) the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of that person;

and no other benefits, except benefits incidental to the scheme or arrangement; or

- (h) business undertaken by a person, being a carrier, carrier's agent, forwarding agent, wharfinger, warehouseman or shipping agent, relating only to the person's liability in respect of goods belonging to another person and in the possession, or under the control, of the first-mentioned person for the purpose of the carriage, storage or sale of those goods; or
- (i) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person's liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or
- (j) the business of insuring the property of a registered religious institution (within the meaning of the Fringe Benefits Tax Assessment Act 1986 ) where the person carrying on the business does not carry on any other insurance business; or
- (k) health-related business within the meaning of section 131-15 of the Private Health Insurance Act 2007 carried on by a private health insurer within the meaning of that Act through a health benefits fund within the meaning of section 131-10 of that Act; or
- (l) health insurance business within the meaning of Division 121 of the Private Health Insurance Act 2007 carried on by a private health insurer within the meaning of that Act.

1.11. A person commits an offence if:

- (a) the person carries on insurance business in Australia; and
- (b) the person is not a body corporate or a Lloyd's underwriter; and
- (c) there is no determination in force under subsection 7(1) of the Act that this subsection does not apply to the person (the effect of which is to allow the person to carry on insurance business without being authorised under the Act to do so).

1.12. APRA regulate all persons that carry on insurance business as defined in the Insurance Act, 1974.

1.13. Underwriting agencies do not carry on insurance business as defined in the Insurance Act, 1974 and are not regulated by APRA.

1.14. All UAC members hold or operate under appropriate authorisations issued by the Australian Securities & Investments Commission ("ASIC").

1.15. An underwriting agency is licensed as an Australian Financial Services Licensee pursuant to section 913B of the Corporations Act 2001.

1.16. The licence of an underwriting agency will usually authorise the licensee to carry on a financial services business to:

- (a) provide financial product advice in specified classes;

- (b) deal in a financial product by:
  - (i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products: in specified classes; and
  - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of specified classes of products:

1.17. The authorisation can be for retail clients, wholesale clients or retail and wholesale clients.

1.18. Some underwriting agencies also operate as insurance brokers and their authorisation by ASIC deals with the additional conditions required to carry on business as an insurance broker.

## **2. General proposition in relation to the funding model**

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2.1. UAC contends further consultation is required and welcomes the opportunity to be involved in that consultation.

2.2. The financial industry alone should not bear the cost of funding ASIC's operations bearing in mind that Australia's financial services industry across its many and varied sectors is the foundation for all commercial and domestic activities.

2.3. It must be recognised that effective and efficient regulation of such a vital industry is of enormous benefit to the entire nation and if the funding platform has to change then there should be a contribution from both the industry and from Government revenue.

2.4. Consideration should be given to the New Zealand model of Government and Industry sharing the cost of regulation which is a more equitable model.

2.5. The funding paid by underwriting agencies should recognise that their supervision historically takes little of ASIC's time compared to other sectors of the financial services industry.

2.6. ASIC should use its powers to recover the expenses of its investigations, enforcement and prosecutions from those responsible for the activity and any shortfall in the recovery of these expenses should be funded by the public and not the financial services industry.

2.7. The proposed model makes inadequate allowance for the differing levels of regulatory attention and effort within the broad category of "Financial Advice Providers".

2.8. Financial advice provided by an underwriting agency, an agent of an insurer is entirely different in context to that provided by an insurance broker to its retail customer. The model does not seek to identify the differences or address the differences in the proposed costings.

2.9. When providing financial advice an underwriting agency provides advice to a person that is also authorised to provide financial advice.

- 2.10. The fees recouped should reflect the nature of the financial advice and the entities to whom advice is provided.
- 2.11. A separate fee component should not be imposed on underwriting agencies for the provision of financial advice where that advice is provided to an entity authorised to provide financial advice.
- 2.12. The proposal adopts a tiering methodology for Financial Advice Providers based on whether advice is authorised for Tier 2 products only or Tier 1 products generally. A typical AFS licence for an underwriting agency does not distinguish between advice for Tier 2 or Tier 1 products. It is not clear how ASIC will apply the proposed funding model in the absence of this information.
- 2.13. Consideration should be given to further categorisation of the industry subsectors with particular reference to financial product advisors and the differences between insurance brokers and underwriting agencies. Separate sub categories should be created for the subsectors of the insurance industry, namely insurance brokers and underwriting agencies.
- 2.14. The proposed annual fees may operate as a barrier to entry in to the industry and reduce competition between underwriting agencies with a reduced number of agencies.
- 2.15. The annual fees will add new costs to the operations of underwriting agencies while providing no additional benefit to the business owners or to the end users.
- 2.16. Any fees charged to entities should be reflective of actual costs and not cross subsidise activities that do not regulate or affect that entity.
- 2.17. Any funding model should ensure there is no duplication in charging. For example there should not be separate fees attributed to dealing in products and being a product distributor.
- 2.18. The recurring fees are excessive when compared to current fees.
- 2.19. Transparency in costing should be a feature of any new arrangements and insufficient detail has been provided in relation to costs to allow a reasoned response on the proposed charges.

### **3. Conclusion**

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- 3.1. UAC will welcome the opportunity to be involved in further consultation.