



Financial Services Unit
Financial System Division
The Treasury

Email: ProductRegulation@treasury.gov.au

15 March 2017

Dear Sir or Madam,

Response of IG Markets Limited (“IG”) to the Design and Distribution Obligations and Product Intervention Power Proposals Paper (the “Proposals Paper”)

We are grateful for the opportunity to respond to the Proposals Paper and to provide our comments on the proposals.

1. IG

By way of brief background, IG deals in securities, managed investment schemes and over-the-counter (“OTC”) contracts for difference (“CFDs”) on a broad array of financial instruments, to a predominantly retail client base. IG is regulated in Australia by the Australian Securities and Investments Commission (“ASIC”) and is a holder of an Australian Financial Services (“AFS”) Licence (No. 220440).

For further information about IG please see the enclosed annex, which provides a short summary of our business and our corporate group.

2. Executive Summary

We support the Government’s aim of creating new accountability obligations for entities that issue or distribute financial products and strengthening consumer protection by introducing intervention powers. We support the majority of the proposals set out in the Proposals Paper, and we provide the following comments and feedback, which we hope Treasury will consider. These comments are considered further below when addressing the questions posed by the paper:

- Product intervention powers, specifically the power to ban the distributing of a product should only be invoked by ASIC as a last resort. Before invoking any such powers, less restrictive measures should be considered and all supervisory and/or enforcement actions must be exhausted, thereby preventing the need to ban the distribution of the product by all product issuers. Additionally, there should be a full consultation with the impacted industry sector before banning the distribution of a product, with ASIC being required to provide a thorough justification of its actions based on quantifiable evidence and accurate assumptions about the knowledge and trading behaviour of Australian retail clients, in order to give the relevant industry sector an opportunity to challenge ASIC’s decision. The consultation should be appropriately scaled to the level of detriment incurred by the consumers, e.g. for matters affecting consumers on a market-wide basis, consultation with the market as a whole should occur;
- In order to avoid the unintended consequence of Australian consumers moving their business to product distributors and issuers in offshore, unregulated jurisdictions, thereby losing the protections provided by ASIC and external dispute



resolution bodies such as the Financial Ombudsman Service (“FOS”), any product design and distribution rules, and product intervention powers, must not be overly restrictive;

- The proposals should not inhibit consumer choice and stifle competition between product issuers. Such an outcome would inhibit the objective of promoting effective competition in the interests of consumers;
- Consideration ought to be given to other ongoing industry initiatives and regulatory changes, such as the Corporations Amendment (Client Money) Bill 2016 and Corporations Amendment (Client Money) Regulation 2016. The consultation should consider how such reforms impact the degree of any proposed intervention and the overall risk profile of the product and issuers;
- Given the wide range of products subject to the proposals, we suggest that much of the detail regarding implementation should be in ASIC guidance notes. Any legislation should remain broad and open to a degree of interpretation to allow for the nuances of different products; and
- We view these proposals as an opportunity to work with ASIC in implementing industry best practice across the wider industry.

3. Response to the questions in the Proposals Paper

Q1. Do you agree with all financial products except for ordinary shares being subject to both the design and distribution obligations and the product intervention power? Are there any financial products where the existing level of consumer protections means they should be excluded from the measures (for example, default (MySuper) or mass-customised (comprehensive income products for retirement) superannuation products)?

Yes, we agree. We do not consider there to be any other products that should be excluded from the measures.

Q2. Do you agree with the design and distribution obligations and the product intervention power only applying to products made available to retail clients? If not, please explain why with relevant examples.

Yes, we agree. However, to the extent a product is made available to both retail and wholesale clients, the design and distribution obligations and product intervention powers should not apply in respect of the availability of the product to wholesale clients.

Q3. Do you agree that regulated credit products should be subject to the product intervention power but not the design and distribution obligations? If not, please explain why with relevant examples.

No comment.

Question 4. Do you consider the product intervention power should be broader than regulated credit products? For example, ‘credit facilities’ covered by the unconscionable conduct provisions in the ASIC Act. If so, please explain why with relevant examples.

No comment.

Q5. Do you agree with defining issuers as the entity that is responsible for the obligations owed under the terms of the facility that is the product? If not, please explain why with relevant examples. Are there any entities that you consider should be excluded from the definition of issuer?



Yes, we agree. We do not consider there to be any other entities that should be excluded.

Q6. Do you agree with defining distributors as entity that arranges for the issue of a product or that: (i) advertise a product, publish a statement that is reasonable likely to induce people as retail clients to acquire the product or make available a product disclosure document for a product; and (ii) receive a benefit from the issuer of the product for engaging in the conduct referred to in (i) or for the issue of the product arising from that conduct (if the entity is not the issuer).

We broadly agree with the definition of a 'distributor' in the Proposals Paper, primarily because it includes entities that are actively inducing retail clients to acquire the products in question. However, we consider that further clarity should be provided on what it means to 'advertise a product' and 'receive a benefit'. As noted in the paper the definition is not intended to include media companies engaged to advertise products, which is consistent with other exclusions for media companies in the *Corporations Act 2001* (Cth). We do not consider it necessary for the definition of 'distributor' to include those that passively promote the product in question. An example of such passive advertising would be banner advertisements placed upon the websites of partner entities. These banner advertisements merely direct consumers to the website of the issuer and nothing else, but a fee may be received depending upon how many consumers are redirected. We consider it to be unnecessarily onerous to impose the distributor obligations upon such entities that are passively advertising the products in question, as opposed to those actively inducing clients to acquire the product. We consider banner advertisements on third party websites to fall into the exclusions noted in the *Corporations Act 2001* (Cth).

Q7. Are there any situations where an entity (other than the issuer) should be included in the definition of distributor if it engages in the conduct in limb (i) but does not receive a benefit from the issuer?

No.

Q8. Do you agree with excluding personal financial product advisers from the obligations placed on distributors? If not, please explain why with relevant examples. Are there any other entities that you consider should be excluded from the definition of distributor?

Yes, we agree.

Q9. Do you agree with the obligations applying to both licensed and unlicensed product issuers and distributors? If they do apply to unlicensed issuers and distributors, are there any unlicensed entities that should be excluded from the obligations (for example, entities covered by the regulatory sandbox exemption)? Who should be empowered to grant exemptions and in what circumstances?

Yes, we agree with the proposed obligations applying to both licensed and unlicensed issuers and distributors. Any exemptions should be considered by ASIC, which would then advise the relevant minister to grant exemptions from the provisions of the *Corporations Act 2001* (Cth) as necessary.

Q10. Do you agree with the proposal that issuers should identify appropriate target and non-target markets for their products? What factors should issuers have regard to when determining target markets?

Yes, we agree that issuers should identify appropriate target and non-target markets for their products. For the products IG provides, the factors used when determining the target market would likely mirror those already used by IG to assess client suitability during the on-boarding process. This includes using information such as experience, employment, wealth and income in determining whether the client qualifies to trade on the products available. In our view it would be sensible to use the same criteria to identify the target markets.



Q11. For insurance products, do you agree the factors requiring consumers in the target market to benefit from the significant features of the product? What do you think are significant features for different product types (for example, general insurance versus life insurance)?

No comment.

Q12. Do you agree with the proposal that issuers should select distribution channels and marketing approaches for the product that are appropriate for the identified target market? If not, please explain why with relevant examples.

Yes, we agree.

Q13. Do you agree that issuers must have regard to the customers a distribution channel will reach, the risks associated with a distribution channel, steps to mitigate those risks and the complexity of the product when determining an appropriate target market? Are there any other factors that issuers should have regard to when determining appropriate distribution channels and market approach?

Yes, we agree.

Q14. Do you agree with the proposal that issuers must periodically review their products to ensure the identified target market and distribution channel continues to be appropriate and advise ASIC if the review identifies that a distributor is selling the product outside of the intended target market?

Yes, we agree that some form of periodic review should be conducted by issuers, and any adverse findings reported to ASIC. However, the scope and frequency of the review should be at the discretion of the issuer due to the large number of products that the proposals cover. IG's products and distribution channels rarely change, as such, we suggest that frequent reviews for the products we issue would be unnecessary and onerous.

Q15. In relation to all the proposed issuer obligations, what level of detail should be prescribed in legislation versus being specified in ASIC guidance?

Given the wide range of products that the legislation will cover, we suggest that the majority of the detail should be provided in ASIC guidance rather than prescribed in legislation. Having such detail in the guidance will allow for differences across significantly varied product types and also provide the scope for types of issuers to determine the most appropriate course of action that suits the products that they offer. The legislation should only detail the high level obligations and allow for the guidance to provide flexibility regarding the implementation.

Q16. Do you agree with the proposal that distributors must put in place reasonable controls to ensure that products are distributed in accordance with the issuer's expectations?

Yes, we agree.

Q17. To what extent should consumer be able to access a product outside of the identified target market?

A consumer should be able to access any product, even if they are considered outside the target market, as a matter of choice. It should not be for distributors to decide if a consumer wants to use a particular product.

Q18. What protections should there be for consumers who are aware they are outside the target market but choose to access a product regardless?



Notwithstanding our view that the consumer should have ability to exercise freedom of choice when accessing products, there should be minimum standards in place to ensure consumers understand the features and significant risks of the product. Such standards are largely in place already with Product Disclosure Statements, Financial Services Guides and, for OTC CFDs, the 'client qualification benchmark' set out in Regulatory Guide 227, which requires an issuer to maintain and apply a written client qualification policy that:

- Sets out the minimum qualification criteria that consumers will need to demonstrate they meet before the issuer will agree to open a new account on their behalf;
- Outlines the processes the issuer has in place to ensure that consumers who do not meet the qualification criteria are not able to open an account and trade CFDs; and
- Requires the issuer to keep written records of client assessments.

Q19. Do you agree with the proposal that distributors must comply with reasonable requests from the issuer related to the product review and put in place procedures to monitor the performance of products to support the review? Should an equivalent obligation also be imposed on advised distributors?

Yes, we agree that distributors should comply with requests from the issuer related to product review and this should form part of the agreement between the issuer and distributor.

Q20. In relation to all the proposed distributor obligations, what level of detail should be prescribed in legislation versus being specified in ASIC guidance?

As noted in the response to question 15, given the wide range of products that the legislation will cover, we suggest that much of the detail should be provided in ASIC guidance rather than prescribed in legislation. Having such detail in the guidance will allow for differences across product types, and also provide the scope for types of issuers to determine the most appropriate course of action that suits the products that they offer. The legislation should only detail the high level obligations and allow for the guidance to provide some flexibility regarding its implementation.

With specific regard to the relationship between issuers and distributors, it may be reasonable to mandate specific minimum terms in the agreement regarding the design and distribution obligations.

Q21. Do you agree with the obligations applying 6 months after the reforms receive Royal Assent for products that have not previously been made available to consumers? If not, please explain why with relevant examples.

Yes, we agree.

22. Do you agree with the obligations applying to existing products in the market 2 years after the reforms receive Royal Assent? If not, please explain why with relevant examples and indicate what you consider to be a more appropriate transition period.

Yes, we agree.

Q23. Do you agree that ASIC should be able to make interventions in relation to the product (or product feature), the types of consumers that can access a product or the circumstances in which a consumer can access the product If not, please explain why with relevant examples.

It is our submission that any intervention powers should be targeted at individual product issuers, rather than banning the distribution of the product on an industry-wide basis. Having regard to the industry we operate in, the regulatory and conduct issues which have arisen in this space are the result of small firms, operating in a non-compliant manner with poor conduct risk cultures, leading to poor outcomes for the clients who contract with these firms. Conversely, as a member of the Australian CFD and FX Forum (the "Forum") we are subject to set standards, above and beyond our legal obligations, including standards



relating conduct and best practice. The combined Forum membership account for approximately two-thirds of all CFD trading activity in Australia¹, and its main objectives are:

- Developing and implementing standards to enhance the efficient operation, transparency, and overall investor confidence in CFDs and FX and the CFD and FX industry. In doing so, provide additional consumer benefits and consumer protection through addressing CFD industry issues and consumer concerns not covered by current legislation;
- Promoting the best interests of members to regulators, investors, Government, the media and other key stakeholders. This involves being a consistent and strong voice in communicating key practices and processes as well as maintaining dialogue and responding to papers issued by regulators in relation to CFDs and FX; and
- Educating investors on CFDs and FX and client money protection so they can make informed decisions when choosing a provider.

The Forum is an example of how a self-regulatory body can lift the standards of the industry without regulatory intervention. Given self-regulatory bodies generally operate to standards above and beyond the relevant laws and regulations, with common aims such as promoting integrity, transparency, and best practice, it is our submission that ASIC should have regard to, and consult with, self-regulating bodies before invoking any product intervention powers.

Furthermore, it is our submission that restricting or banning the distribution of product is an unnecessarily blunt instrument that restricts consumer choice. Such measures have been seldom used in other jurisdictions, where enforcement arrangements are sufficient to correct market-wide behaviour. Some less intrusive alternative measures to improve transparency and investor protection include:

- Industry self-commitment as implemented by BaFin in Germany for example, which favours ten principles to improve transparency and investor protection regarding the issuance and distribution of credit linked notes;
- Raising the regulatory capital requirement for firms that operate in a non-compliant manner, or in a manner that leads to poor outcomes for consumers and/or the industry. An increased regulatory capital requirement for such firms will act as a disincentive to operate in a non-compliant manner, thereby lifting conduct standards across the industry. We note that the regulatory capital required for derivative providers is currently only \$1 million, a financial barrier to entry and ongoing capital requirement that is extraordinarily low.
- ASIC being proactive in banning firms or initiating other serious enforcement action against firms that fail to comply with the AFS licence obligation pursuant to s. 912A(1)(a) of the *Corporations Act 2001* (Cth) to do *'all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly.'*
- Requiring product issuers to demonstrate strong conduct risk frameworks to set policy and monitor client outcomes caused by tools designed to manage risks, for example automatic close out monitors for CFDs subject to a margin call.

Adopting alternative, less restrictive measures, such as those outlined above, would significantly help to improve transparency and investor protection, while avoiding the need for the creation of new market-wide product intervention powers, which may prove complicated to implement and lead to possible unintended consequences. For example, a market-wide ban on a

¹ *Industry Trends Pty Ltd, Australia CFD Report – May 2016: CFD primary market share of Forum members as at May 2016, 64%.*



particular product would likely lead to consumers taking their business to offshore, unregulated product issuers, thereby losing the protections afforded to them by ASIC and the access to external dispute resolution bodies, such as FOS.

If product intervention powers are given to ASIC, extreme care must be taken in determining how, when and why ASIC is allowed to execute those powers. There is a significant difference between ASIC imposing minimum risk warning standards on certain products and being able to ban an entire class of products. There must be a full consultation with the impacted industry sector before banning a product, and ASIC must be required to provide complete and thorough justification for their decision to ban a product, in order to give the industry sector an opportunity to respond. The scope of the consultation process should be proportionate to the scope of detriment incurred by consumers. For example, for matters affecting consumers on a market-wide basis, consultation with the market as a whole should occur. In assessing whether a proposed intervention is proportionate to the level of consumer detriment, consideration should be given by ASIC to the scale of impact of the intervention to the market. We would suggest that those ASIC interventions that may have a greater impact should be subject to some form of independent review prior to ASIC exercising such powers. Moreover, before ASIC is able to invoke any product intervention powers, all supervisory and/or enforcement actions must be exhausted, thereby likely eliminating the need to ban all product issuers. Furthermore, we note that while product intervention may be temporary, the impact on product issuers would likely be significant and in some cases irreversible.

Q24. Are there any other types of interventions ASIC should be able to make (for example, remuneration)?

No.

Q25. Do you agree that the extent of a consumer detriment being determined by reference to the scale of the detriment in the market, the potential scale of the detriment to individual consumers and the class of consumers impacted? Are there any other factors that should be taken into consideration?

Yes, we agree that the extent of consumer detriment can partially be determined by reference to the scale of detriment to the market, individual consumers and class of consumer. However, while this should form the basis for determining the extent of consumer detriment, and it should be flexible to cover all circumstances, some metrics should be identified and discussed in the guidance provided by ASIC on the subject. These may include percentage of income affected, number of consumers affected compared to the market as a whole, and whether detriment was caused by a specific product issuer or by a group of product issuers.

Q26. Do you agree with ASIC being required to undertake consultation and consider the use of alternative powers before making an intervention? Are there any other steps that should be incorporated?

As noted in question 23, we agree that ASIC should be required to undertake a thorough consultation prior to any intervention taking place. ASIC should also thoroughly review its alternative powers prior to making any intervention. As noted in the proposals paper, the level of consultation should be scaled dependent upon the nature of the intervention. Any intervention that is market wide and involving a class of product should be subject to industry consultation. When consulting, ASIC should clearly outline the factors that it has considered in proposing the intervention, including the scale of detriment occurring and why alternative powers are not appropriate or sufficient to address the issue. ASIC should also clearly describe the nature and parameters of the proposed intervention.

Q27. Do you agree with ASIC being required to publish information on intervention, the consumer detriment and its consideration of alternative powers? Is there any other information that should be made available?

Yes, we agree that ASIC should be required to publish information on the intervention. The publication should be in a standardised format and include certain mandatory information in respect of each intervention. As noted, this should include entities affected by the intervention and the duration of the intervention, the scale of consumer detriment and a clear



explanation of what alternate powers were considered and why they were not appropriate or sufficient. The publication should also detail the consultation that occurred prior to the intervention taking place.

Q28. Do you agree with interventions applying for an initial duration of up to 18 months with no ability for extensions? Would a different time frame be more appropriate? Please explain why.

No, we do not agree that the initial duration of an intervention apply for up to 18 months. We concur with the view of the FSI that 12 months is sufficient time for the relevant practices to be remediated. In circumstance where ASIC reasonably expects that the intervention may result in legislated policy change, which we suggest would occur only in limited circumstances, this could be identified when the intervention is first made and the extended time period applied.

Q29. What arrangements should apply if an ASIC intervention is subject to administrative or judicial appeal? Should an appeal extend the duration that the Government has to make an intervention permanent?

If an ASIC intervention is subject to an administrative or judicial appeal then the intervention should cease until the appeal has been finalised. However, when an appeal is made this should also lead to an extension of the time the Government have to make the intervention permanent. The extension should be equal to the duration of the appeal.

Q30. What mechanism should the Government use to make interventions permanent and should be mechanism differ depending on whether it is an individual or market wide intervention? What (if any) appeal mechanisms should apply to a Government decision to make an intervention permanent?

In the case of individual interventions, the Government could direct ASIC to use its powers to make the intervention permanent. Any such permanent intervention should be subject to appeal within the Administrative Appeals Tribunal. Permanent market wide interventions should be addressed through legislative change as it is likely that any such intervention which needs to be made permanent will involve a policy change by Government.

Q31. Are there any other mechanisms that could be implemented to provide certainty around the use of the product intervention power?

ASIC should thoroughly engage with affected parties prior to making an intervention, and allow time for remediation if possible. Where ASIC identifies an issue and exercises its product intervention powers, ASIC should also set a clear series of actions and timeframe which, if adhered to by the relevant market participants, will result in the lifting of the intervention.

Q32. Do you agree with the powers applying from the date of Royal Assent? If not, please explain why with relevant examples.

Yes, we agree with the powers applying from the date of Royal Assent.

Q33. What enforcement arrangement should apply in relation to a breach of the design and distribution obligations or the requirements in an intervention?

We consider a breach of the design and distribution obligations to be less significant than a breach of the requirements of an intervention. Consequently, only administrative actions should be used for breaches of the design and distribution obligations, whilst for breaches of the requirements of intervention injunctions and civil penalties should also be available.

34. What consumer rights and redress avenues should apply in relation to a breach of the design and distributions obligations or the requirements of an intervention?



We consider the current provisions available to protect and enforce consumer rights as detailed in the proposals paper to be sufficient when applied to breaches of the design and distribution obligations or the requirements of an intervention.

Conclusion

We welcome the ability to engage in consultations and thank the Treasury for the opportunity to be able to provide comments on the proposals in the Proposals Paper.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Tamas Szabo', written over a light blue grid background.

Tamas Szabo
Chief Executive Officer
Australia and New Zealand



ANNEX: SUMMARY OF IG MARKETS BUSINESS OPERATIONS

1) INTRODUCTION

IG Markets Limited (“IG”) deals in securities, MIS and contracts for differences (CFDs) on a broad array of financial instruments. IG was formed in the UK under the laws of England and Wales where it is regulated by the Financial Conduct Authority (“FCA”). IG is also registered as an overseas company in both Australia and New Zealand where it is regulated by ASIC and the FMA respectively.

2) INFORMATION ABOUT IG AND THE IG GROUP

2.1 IG and the IG Group

IG is a member of the IG Group, which was established in 1974 in the UK. IG Group Holdings plc is the ultimate holding company of the IG Group and, in May 2005, its shares were listed on the London Stock Exchange. IG Group Holdings plc’s market capital is currently in excess of £2.9 billion and it is a FTSE 250 company. The IG Group has offices in London, France, Spain, Portugal, Germany, Italy, Sweden, the United States, Japan, South Africa, Luxembourg, The Netherlands, Switzerland, Dubai, Australia and Singapore. It also has a Representative Office in China and employs approximately 1,500 people worldwide.

2.2 IG’s regulators

IG’s primary regulator is the Financial Conduct Authority (“FCA”) in the UK. As noted above IG also holds an AFSL in Australia where it has been in operation since 2002. IG has activated its EU regulatory passport and provides services from branches in Germany, France, Italy, Spain, Portugal, Sweden, Ireland, Luxembourg and the Netherlands and is subject to conduct of business supervision by the regulators in these European countries. Other IG Group companies are regulated by the CFTC in the US, the Financial Services Agency in Japan, the Financial Markets Authority New Zealand, the Monetary Authority of Singapore, the Financial Services Authority in Dubai and the Financial Markets Supervisory Authority in Switzerland.

2.3 More information about IG and IG Group

IG’s Australian website (www.ig.com/au) contains a description of our securities, MIS and CFDs, the range of markets offered, explains our online dealing platforms and provides examples of the way in which our products work. The site also contains relevant disclosure documents, customer agreement and application forms.

The IG Group’s corporate website (www.iggroup.com) contains further information about the IG Group of companies, including copies of our most recent report and accounts.