

Dear Sir / Madam

I refer to the Design and Distribution Obligations and Product Intervention Power Proposals Paper issued by the Treasury in December 2016 (Paper).

I am writing this submission on behalf of the Corporate Trust division of Perpetual, provider of corporate trustee services to the financial industry. We act as third party trustee for a broad range of investment funds.

## **1. Applicability**

We agree that the design and distribution obligations and the product intervention power should only apply to products made to retail clients (see section 2.1 and question 2 of the Paper).

However, there may be confusion in the applicability of these obligations if the products are made available directly to wholesale clients but indirectly to retail clients through platforms or wrap type arrangements. In that situation, will the obligations apply to the issuer of the product, even though they may not know the identity of the indirect retail investors, or will the obligations be imposed upon the platforms or wrap operators?

However, we suggest that in the context of a third party or outsourced trustee, the obligations in section 3.2 of the Paper should apply to the investment manager, instead of the trustee itself, and as a result, the definition of issuer should exclude a third party or outsourced trustee (see question 5 of the Paper), for the following reasons:

- (a) In the “Summary of proposals” section on page 4, it is stated specifically that examples of issuers are “fund managers”.
- (b) Some of the obligations of the issuers as proposed in the Paper, including choosing appropriate distribution channels and marketing, are part of the normal role of the investment manager in a outsourced trustee context.
- (c) It is impractical and onerous for an outsourced trustee to conduct post-scale review of the product, which is an obligation of the issuers as proposed in the Paper. In the context of an outsourced trustee, it is the investment manager who has the intimate knowledge of the investment strategy of the product, and they would be better placed and suitable to conduct such post-scale review of the product. Furthermore, in the outsourced trustee context, it is the investment manager who has the relationship with the customers and the product distribution channels, so they should be the one conducting any post-scale review of the product. Furthermore, if this review is to be conducted by a outsourced trustee, it will require additional resourcing for the trustee, which may deem the outsourced trustee model to be more expensive for investment managers and ultimately the end investor.

In our opinion, the only obligation that an outsourced trustee should have is to monitor the investment manager to ensure their obligations as issuer is being complied with.

## **2. Obligations of issuers**

The proposal that issuers should identify target and non-target markets for their products (see section 3.2 and question 10 of the Paper) may require more analysis. This is traditionally the role of the financial adviser, for which they have the appropriate qualification and experience. In relation to a trustee or investment manager, they may be able to fulfil their role without the need to have any qualification or experience in relation to provision of financial product advice, and hence requiring them to consider target and non-target markets may not be entirely appropriate if they do not have such qualification or experience.

The problem for issuers to identify target and non-target markets is also seen clearly in a platform context, where their product is added to the approved product lists of certain platforms. In that context, the investor in the product is the platform, which is a wholesale client, and it is the platform who is distributing the issuer's product to the retail clients. Will the issuer have any obligation to identify target and non-target markets for the platforms to distribute, even though technically the issuer is only providing the product to direct wholesale clients? If there is an obligation on the issuer to do this, and to monitor the distribution strategy of the platforms, will the issuer also have such obligations if its product is distributed through informal distribution channels such as recommendations from families and friends? These issues have not been considered in the Paper.

Furthermore, practically, it will be hard for issuers to make such identification in the current age of social networks and digital delivery. For example, if a disclosure document is made available on the issuer's website, how are they able to limit the distribution of the document to non-target investors? The only practical way is through the use of disclaimers or warnings, which may not be sufficient for the purpose of post-scale review as proposed in the Paper.

In relation to the proposal that issuers must periodically review products to ensure identified target market and distribution channel continues to be appropriate (see section 3.2 and question 14 of the Paper), for practical purposes, the issuer should only report material or significant issues as a result of the distributor not selling to intended market, not report all matters as it is currently proposed.

### **3. Commencement**

The proposed commencement period being 6 months after Royal Assent (see section 3.4 and question 21 of the Paper) is not long enough. More time is required for issuers to understand what target market monitoring can be achieved from speaking with distributors and administrators. More time may also be needed to develop any associated reports required to be received from the distributors and administrators. In our view, a commencement period of 12 months after Royal Assent is more appropriate and practical, especially for new products.

If you require any further information in relation to the above, please do not hesitate to contact us.

Regards

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