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Ruth Moore
Manager - Consumer and Corporations Policy Division
The Treasury

15 August 2018

By email: ProductRegulation@treasury.gov.au

Dear Ms Moore

Revised Exposure Draft Legislation for Design and Distribution Obligations and Product Intervention Power

The Australian Finance Industry Association [AFIA] welcomes the opportunity to comment on the revised exposure draft legislation of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* [the Bill].

AFIA is well placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels including digital access. Further background on AFIA is available through: www.afia.asn.au.

AFIA appreciates Treasury's solicitation of input to shape these reforms. At the substantive level, we welcome the proposed additional twelve months from the initial announced commencement date for when the design and distribution obligations will take effect. We also welcome the revisions which assist clarify that it will not constitute personal advice if a regulated-entity asks the customer for information to determine if the customer is in a target market determination and informing that customer if they are (or not).

We provide the following further feedback on the revised exposure draft.

Schedule 1 Subsection 994H(3) – Period to Provide Distribution Information

AFIA recommends reconsideration by the Government of the timeframe for information-provision to ASIC. Under the current draft, issuers and distributors will be required to provide information to ASIC within '10 business days' upon a request from ASIC. Based on feedback from members, AFIA does not believe this is a reasonable timeframe that balances the underlying policy objective in a way that enables a response in a

manner that allows the regulated-entity to respond in an administratively efficient and cost-effective manner.

As was reflected in our earlier submission, AFIA in principle acknowledges the need for a timely response to a request from ASIC. However, a 10 day window presents significant compliance challenges (and cost) particularly where the response necessitates the regulated-entity to engage with a third party to obtain the information to provide to ASIC.

AFIA respectfully recommends: that the Government extend the period for response to '15 business days' This would reflect a position that achieves the policy objective while containing compliance resourcing and cost; in line with the Government's policies of best-practice regulation making and red-tape reduction.

Need for ASIC Guidance on Key Requirements

To assist with implementation our Members seek ASIC guidance on the design and distribution obligations and product intervention power as soon as possible after the Bill receives Royal Assent. This may help regulated entities to implement changes required under the new obligations and powers. ASIC should, as part of its guidance, provide clarity on the following:

- Section 994G: the definition of when an issuer or distributor becomes 'reasonably aware'.
- Section 994C: clarity on when a criminal or civil penalty will apply for each of the offences outlined. It is unclear when a criminal or civil penalty will apply.
- Subsection 994B(5): further guidance on what a compliant Target Market Determination will look like. This may include ASIC providing examples.
- Subsection 1023D(b): what will constitute 'significant detriment' for ASIC to make a product intervention order.

AFIA would also welcome the opportunity to be involved and provide industry input to inform the development of ASIC's guidance on these and other relevant matters ensuring an operationally efficient outcome.

Next steps

Should you wish to discuss our feedback further, or require additional information, please contact me at

██████████ or Alex Thrift, Economic & Senior Policy Adviser at ██████████ or both via
██████████.

Kind regards

A handwritten signature in black ink, appearing to read 'Helen M. Gordon'. The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Helen Gordon
Chief Executive Officer