

Richard St. John
Statutory Compensation Review
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Kingston ACT 2604

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1 June 2011

Dear Mr St John

Consultation Paper: Review of compensation arrangements for consumers of financial services

We appreciate the opportunity to respond to the Consultation Paper: Review of compensation arrangements for consumers of financial services issued by Richard St. John.

While Deloitte is supportive in principle of the principals outlined in the Consultation Paper - a statutory compensation scheme (scheme) for clients who suffer damage or incur loss as a result of misconduct by persons with whom they have dealt in the financial services sector - our general view is that how this is achieved will depend on:

- the industries within which an AFS Licensee operates
- the existing insurance arrangements held by AFS Licensees, and
- any existing compensation regime that a client has access to.

Any compensation scheme that operates as a “last resort” is necessary only for those advisers who do not hold adequate and appropriate insurance cover (for whatever reason). An AFS Licensee who holds adequate and appropriate insurance cover should be exempted from any statutory insurance requirements / compensation scheme – so that they are not:

- supporting licensees who have failed to insure, and/or
- effectively being required to hold more than one insurance policy.

We also have specific comments in relation to the development of the scheme.

Section 5: Observations and issues

5.1 The nature and extent of any shortfall in the delivery of compensation under current arrangements

As stated in the Consultation Paper, most AFS Licensees are required to hold professional indemnity insurance cover that is adequate for their business. ASIC Regulatory Guide 126 sets out the various considerations that the Australian

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Securities and Investments Commission sees relevant for licensees in assessing the adequacy of its professional indemnity insurance cover. Whether a professional indemnity policy arrangement is adequate and appropriate depends on all of the facts and circumstances, including the nature, scale and complexity of the business, the variety of work performed, and other financial resources.

Deloitte is a member of the Institute of Chartered Accountants (ICAA), and as such, is required to hold professional indemnity insurance of not less than \$20 million / \$75 million for insolvency and non-audit work / audit work respectively. This insurance covers each Partner and employee of Deloitte, as well as all AFS Licence holders (as subsidiaries of Deloitte).

While we do not comment on the nature and extent of any shortfall in compensation for other organisations or industries, Deloitte holds professional indemnity insurance that meets the requirements of the ICAA and is satisfied that, our insurance policies are both adequate and appropriate. We would submit that all of our clients, including retail clients, have recourse to adequate compensation to meet any claim. As such, those organisations that already hold adequate insurance should be exempt from the scheme.

5.4 The scope for more standardisation in the kind of professional indemnity insurance cover available for financial service licensees or classes of licensee.

Should Mr St.John recommend standardising the professional indemnity insurance cover available for AFS Licence holders, we submit that consideration be given to how standardised professional indemnity insurance would operate in practice where an AFS Licensee operates a multi-disciplinary practice and is subject to other registrations and regulatory regimes (for example registered tax agents under the Tax Agent Services Act or members of the ICAA).

We would submit that the policy framework should be flexible enough to accommodate existing insurance policies that meet other regulatory obligations an AFS Licence holder may be subject to, so that there is no requirement to hold multiple insurance policies – each meeting the needs of a different registration or regulatory obligation.

We would also submit that AFS Licence holders who are able to obtain an appropriate level of professional indemnity insurance be exempted from any requirement to hold a standardised policy as this meets the policy objective of ensuring availability of insurance for AFS Licence holders and ensuring that all retail clients have access to adequate and appropriate compensation without requiring some AFS Licence holders to hold multiple policies.

5.8 The merits, and key design components, of a last resort scheme to provide compensation for retail clients, including the approach to industry funding.

As stated in the Consultation Paper, the compensation arrangements aim to provide some assurance that retail clients will be able to obtain compensation to which they may become entitled from financial services providers with whom they deal.

However, for the reasons given at 5.1 above, Deloitte considers that our clients have recourse to an adequate compensation scheme to meet claims that may be brought by our clients. Any case for a statutory compensation scheme needs to be considered within the existing framework of measures for the protection of consumers and the overall regulatory scheme for financial services.

As noted above, members of the ICAA are already subject to minimum insurance requirements, and for members such as Deloitte, the insurance requirements of the ICAA exceed the claim limit likely to be imposed on any statutory scheme (noting that the PFS/FOS scheme proposal suggests a maximum payment of \$204,000 on a claim of \$280,000 or more).

Any requirement for ICAA members to make a contribution to a statutory compensation fund should take into account existing levels of insurance and the likelihood that clients of a particular financial services licensee will be required to have recourse to the fund, as these members are effectively insuring twice.

Deloitte.

We would be pleased to discuss our comments with either yourself or other members of your team. If you wish to do so, please do not hesitate to contact me on (03) 9671 7934.

Yours sincerely
Deloitte Touche Tohmatsu

Heather Park
Partner