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15 March 2017

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ProductRegulation@treasury.gov.au

Dear Sir or Madam,

DESIGN AND DISTRIBUTION OBLIGATIONS AND PRODUCT INTERVENTION POWER

Thank you for the opportunity to provide feedback on the Proposals Paper, "*Design and Distribution Obligations and Product Intervention Power*" (**Proposals Paper**) issued for public comment in December 2016.

The Australian Finance Conference is a non-institutionally aligned organisation which represents the interests of financiers, banks, credit card providers, credit rating agencies, fintech firms and other licensed providers of consumer and commercial credit. We also provide a directorate service for various affiliated finance product-specific industry bodies including the Australian Equipment Lessors Association, the Australian Fleet Lessors Association, the Debtor and Invoice Finance Association and Insurance Premium Financiers of Australia. This submission is made on behalf of the Australian Finance Conference and affiliated entities, collectively referred to as the **AFC**.

As providers of secured and unsecured consumer credit many of our members are required to hold an Australian Credit Licence (ACL) as a prerequisite to conducting that part of their business. In addition, some members manufacture and/or distribute financial products, notably insurance related to their primary business activity. In relation to this incidental business activity these members are also required to hold an Australian Financial Service Licence (AFSL) or be an authorized representative of an AFSL holder. Accordingly, our members have an interest in the proposed scope and operation of both the design and distribution obligations (**Design and Distribution Obligations**) and the product intervention power (**Product Intervention Power**) discussion in the Proposals Paper.

The AFC observes, as an overview comment, that as a matter of regulation of the financial system there is a balance to be achieved between differing interests. In this instance, it is in

the interests of consumers that the credit or finance products they choose to purchase are appropriate to their needs. It is also in their interests that innovation and competition be encouraged in the financial system, in a technologically and business model neutral manner, so as to deliver a greater choice of products at a variety of price points from which they can choose to purchase the most appropriate product for them. Both sets of consumer interests are legitimate. The challenge is to put in place regulations which align these interests rather than placing them at odds to one another.

The AFC has a concern that the weighting of these two sets of consumer interests in the Design and Distribution Obligations in the Proposals Paper appears somewhat unbalanced.

The interest consumers have in the purchase of credit or finance products appropriate to them by definition emphasizes an individualised approach to their design and distribution. If this interest is considered in isolation, and taken to its logical conclusion, it implies a one-on-one design and distribution model. Such an approach is data intensive, time intensive, human-resource intensive and relatively expensive. There are circumstances, notably financial planning, when this “personal advice model” is arguably most appropriate.¹ Although, it is also noted that most Australian investors do not use financial planners, arguably because of these very features.²

However, the interest consumers have in a financial marketplace which offers a greater choice of products at differing price points suggests there is a place for a more generic approach to product design and distribution. Such an approach is data light, time quick, technology intensive and less expensive. There are circumstances, for example credit cards, where this “general advice model” is arguably most appropriate.

One example of where these two consumer interests potentially collide in the Proposals Paper is in the distribution of financial products which are complementary to credit products.

Page 24 of the Proposals Paper lists possible controls which includes leveraging customer information without requiring the conducting of an individual assessment. However, in the case of a complementary insurance product it can only be determined if the insurance does not partially duplicate a presently held insurance by conducting an individual assessment. This, in turn, would mean that complementary insurance might only be distributed under a model closer to “personal advice” resulting in heightened compliance uncertainty. That, in turn, would make the pricing of the product economically unviable (to the consumer) except for the largest of purchases. This, in turn, would result in a narrowing of the range of cover in the market place (as products are discontinued and insurers/distributors exit the market) to the detriment of all consumers particularly those consumers for whom there would have been no duplication of cover but which are now denied any cover.

In addition to the above general comment the AFC makes the following specific comments:

1. We agree that regulated credit products should not be subject to the design and distribution obligations (so as to avoid a potential duplication of obligations under the National Consumer Code); a concern here is that the two “design” regimes be clearly

¹ We note that at page 15 of the Proposals Paper it is proposed that financial planners be excluded from the proposed distribution obligations since they are subject to a separate regulatory regime.

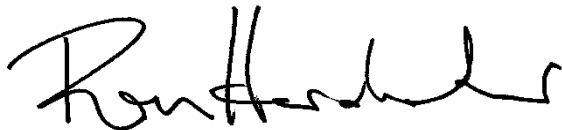
² For example, “4.3 million Australians intend to conduct a financial activity without the help of an advisor in the next two years”, Investment Trends 2015 Direct Client Report, reported May 12 2016: <https://www.professionalplanner.com.au/cut-and-paste/2016/05/12/80-per-cent-of-australians-do-not-currently-use-or-intend-to-use-a-financial-planner-46110/>

demarked so as to avoid evolving guidance on either the ACL or AFSL side having the potential to infer compliance requirements more broadly thereby adding to compliance uncertainty and cost. Subject to this, the product intervention power for credit seems reasonable (Question 3).

2. The discussion in the Proposals Paper on distribution controls appears to pre-suppose that the product issuer and the distributor are unrelated third parties. As a consequence each party is independently obliged to design and implement their own controls. The Proposals Paper contemplates at page 24 that the issuer and distributor should “agree the controls that will be put in place” and that these will be specified in the distribution agreement”. However, there will be circumstances where the issuer and the distributor are members of the same corporate group. In this circumstance the contemplated approach may likely result in a duplication of work and unnecessary costs. In this circumstance we recommend a capacity for joint or group compliance (Question 16).
3. In relation to the distributor’s obligation to put in place reasonable controls (to ensure products are distributed in accordance with the issuer’s expectations) there should be clarity that this expectation will be met if the distributor implements the controls it agrees with the issuer. That is, the distributor will not be liable for a breach of its obligations if there are reasonable controls which the issuer has not specified to the distributor in the distribution agreement (Question 16).

If you have any queries in relation to the AFC submission please do not hesitate to contact me on (02) 9231 5877 or Paul Stacey, Associate Director – Policy on (02) 9225 3810.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

Ron Hardaker
Executive Director