BLACKROCK

Level 37, Chifley Tower
2 Chifley Square, Sydney NSW 2000
Tel 02 9272 2200 Fax 02 9272 2566
www.blackrock.com/au

Retail Client Services 1300 366 100
Client Connect 1800 806 282

Financial Services Unit
Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via Email: ProductRegulation@treasury.gov.au

7 March 2017

Dear Sir/Madam

BlackRock Investment Management (Australia) Limited ("BIMAL" or "BlackRock") welcomes the Consultation Paper (the "CP") on Product Design and Distribution and Product Intervention Power and supports Treasury's objectives to enhance the protection of investors. We welcome the opportunity to address, and comment on, the issues raised by this consultation and we will continue to contribute to consultation process with Treasury or ASIC on any specific issues that may assist in improving the final outcome.

In our submission we have drawn on experience from BlackRock businesses globally facing similar challenges, in particular, within the European Union that are implementing changes affected by the MiFID2 Regulations. The opinions expressed in this response relate to the asset management industry only.

About BlackRock

BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. BlackRock's asset management business in Australia incorporates a range of unlisted managed investment schemes ("MIS"), Exchange Traded Funds ("ETFs") and portfolio construction services in the form of model portfolios ("Model Portfolio").

As a fiduciary for our clients, BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice.

Our comments on the specific matters raised in the CP are set out below and follow the structure of the CP.

Executive Summary

1. We are of the opinion that ETFs and other listed products should be excluded from the distribution obligations due to the anonymous nature of the investor base, which access these products through a highly regulated market without any direct engagement with issuers.
2. We support the proposal to restrict the obligations to products marketed and issued to retail clients only.
3. Although we broadly agree with the concept of target market categorisation for issuers and distributors, we would recommend standardisation of the target market categories across the industry. We would draw Treasury's attention to the target market framework currently being jointly developed by the European Fund and Asset Management Association and its member organisations (in conjunction with a number of manufacturers, distributors and intermediaries) as a point of reference.

4. We support in principle the introduction of a target market assessment but request that a standardised model be applied across the industry for good policy as well as practical reasons, including consistency, relevance, conflict of interest and ease of use. We do not support the proposal that distributors should be tied to the target market assessment of an issuer, which is made on a theoretical basis when distributors will be applying target markets to real investors on a goals basis.
5. Where a product is to be used as part of a broader portfolio an asset manager (as issuer of the financial product) cannot "identify how the product is intended to fit into the broader portfolio" in any way other than as a theoretical example, particularly if the financial products are from various providers as would be the case on a platform.
6. Many asset managers do not operate an end to end manufacturing and distribution process and often rely on separate third party distributors. These types of contractual provisions are indicative of an arm's length commercial arrangement rather than a delegation. The complexity of intermediated distribution and the nature of the distribution chain is such that there is often no legal engagement between the asset manager and the distributor of the product to the end client. This will make any requirement to obtain data from the distributor to undertake target market assessments problematic until the distributor is compelled to do so under law. Further to this issuers cannot be held responsible for the actions of third party distributors in relation to end clients of the distributor where no legal relationship exists.
7. We are concerned that a number of the proposals create licensing compliance risk and liability risk for issuers.
8. We are of the opinion that ASIC must formally consult with issuers and distributors before using any product intervention powers.

Question 1: 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)?

We agree in principle that if any such obligations are imposed on the industry that all financial products should be subject to the design obligations. We believe this is best accomplished by all issuers being subject to an objective, standardised framework. Please refer to our response to Question 10 for more detail. Products that fall within scope of the obligations must be reviewed in the context of continuing to offer and not include products currently in the market place that are marked for closure etc.

In regards to the distribution obligations, we believe that a distinction must be drawn between different types of distribution models, such as funds sold through traditional distributors and ETFs or listed MIS which are designed to be traded on an exchange. It would be difficult for the issuer to receive sales data on products sold via an exchange due to the anonymous investor base of the exchange. An issuer has no relationship with the end investor, who acquires their interest on market through a broker. It would only be the operator of the exchange itself (such as the ASX) or brokers who may even theoretically have the ability to compile such information and experience in trying to obtain information from such parties in examples such as FATCA implementation has demonstrated a third party such as an issuer is practically unable to obtain relevant information. We therefore propose that any products traded on an exchange be exempt from the distribution obligation.

BlackRock offers a suite of Model Portfolio Strategies to platforms and financial advisers which are broad asset allocations designed to assist holders of an Australian financial services licence ("AFS licence")

advise their clients. The model portfolios are a general financial service to AFS licensees rather than a financial product. The end client will hold the securities directly, taking into account advice from an AFS licensee and BlackRock as the issuer does not have access to any information about the underlying investor. Regulatory guidance should stipulate that services such as this are not captured within the scope of the proposed requirements, in particular noting that the interaction with the end retail client is through an AFS licensee.

Question 2: 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.

We appreciate that the proposed obligations and intervention powers are aimed at strengthening consumer protection measures and support the preference to limit the obligations to those products provided to retail clients.

Wholesale customers have sufficient investing experience and knowledge to weigh the risks and merits of an investment opportunity. Furthermore, the statutory and common law duties to act honestly, fairly and in accordance with the best interests of the client expressly apply to wholesale/sophisticated investors.

If the requirements will only relate to retail clients, investors who elect or are deemed to be treated as a wholesale clients and can demonstrate that they meet the criteria, will be excluded from the protections offered by the obligations on issuers and distributors. As a protection to issuers and distributors, it must be made clear that where any investor elects to be captured as a wholesale client this decision is irrevocable and they cannot change their position.

Question 3: 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.

Question 5: 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?

We agree with the product issuers being defined as the entity that is responsible for the terms of the facility that is the product.

For products that are white labelled/wrapped, certainty around the responsibility for such products is required. For example, a MIS may be issued by one firm to another and is then repackaged for sale by another AFS licensee tor retail clients. The selling firm issues and is responsible for a disclosure document. The target market, risks etc would be defined in the new disclosure document and may be different to what was established by the original issuer. To the retail client, they would be of the view they are investing in a product of the selling licensee. In this situation, the MIS should be treated as a separate product and the distribution obligation should fall to the selling or marketing entity, rather than the issuer.

Question 6: 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 agree that the definition is reasonable.

Question 7: 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?

BlackRock only engages with licensed distribution channels.

Question 8: 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?

We understand why Treasury would elect to exempt **p**ersonal financial product advisers from the proposed distributor obligations as their activities are already subject to strict controls and ASIC supervision. We feel that it is pertinent to point out that if these obligations are being used in part to avoid cases such as Storm Financial from recurring, the failure in the Storm Financial case related to advice and the structuring of portfolios, not product design.

An asset manager operating with an intermediated distribution channel will not know if an investor is advised or not unless they come into the product directly. Currently there is no industry consensus or standards for providing data on the underlying clients and until these protocols have been determined, asset managers do not have visibility of investors coming indirectly into its products via a platform.

Question 9: 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?

We would support a proposal to have all providers of financial services included as this better protects the reputation of the industry and increases consumer protection. ASIC should be granted a wide power to exempt issuers and distributors or modify the operation of the regime to address practical issues. Exemptions should be reviewed on a regular basis.

Question 10: 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?

Target market assessment from an issuer's perspective will be theoretical, based on a potential market and will be aimed at a group of investors. The target market assessment of a distributor will be based on a group of investors with similar goals. As issuers will only be able to assess the investor's objectives in the abstract, we recommend that issuers be allowed to focus on clearly defining product features in disclosure documents and that any alignment of product features with target markets be undertaken by the distributors or those with actual knowledge of a target market. To facilitate this, the definition of target market must be standardised into clear, unambiguous categories which facilitate a common understanding across the industry. Any proposed framework should be product driven, reflect the separation of most issuers from the investor's individual circumstances, set clear boundaries between the categories, and be sufficiently flexible to adapt to most investment instruments. This approach ensures a consistent description of financial

instruments and provides distributors with sufficient information to match products or combinations of products to the investment objectives of their clients. If the target market is defined adequately the non target market should become apparent.

We refer Treasury to the proposed target market framework being jointly developed by the European Fund and Asset Management Association ("EFAMA") and its member organisations (in conjunction with a number of issuers, distributors and intermediaries). This proposed framework is in response to the consultation on MiFID2 and is aimed at standardizing the target market model. The proposed model is based on a common denominator/ decision matrix such as the ability of an average retail investor (investing on a nil advice basis) to make an informed investment decision and understand the possible investment outcomes and risks of a financial product based on disclosure documentation market criteria that both issuers and distributors could use to effect. Refer to Attachment 1 for a copy of the proposed framework. The categories included in this proposed framework are, in many ways, specific to the asset management industry but could be adapted for use in the insurance and credit industries.

It is our view that, if standardisation of target market is not mandated by regulation there may be a number of unintended consequences:

- Reduction in the availability of products as intermediated distributors reduce their product range to reduce compliance burden.
- Reduction in the number of issuer-distributor relationships as intermediated distributors reduce the number of issuer partnerships to reduce compliance burden.
- Reduction in availability of products for retail investors as issuers condense their product range to reduce compliance burden.
- If it is not standardised, investors who are not advised may misinterpret or become confused by target market information and restrict their investment to low risk/low return products rather than looking to a range of higher risk products which provide long term growth and protection against inflation depriving them of the benefit of diversification (including across the spectrum of risk assets).
- If the target market criteria for each individual product held must align fully to an investor's overall criteria, investor outcomes are likely to be restricted from benefiting fully from diversification, including reducing the asset classes available to many investors.
- A target market assessment that is product based rather than client led may require distributors to move to a product-led distribution strategy at the expense of service based or objective based approach, which looks at investor needs and investor outcomes holistically.
- The availability of products which have been specifically designed to meet the needs of mass retail investors may be restricted as the strategy is "complicated", but the outcome is "simple" and easy to understand.

Defining a target market for each investment product implies that these products are always sold individually and in isolation, rather than as part of a portfolio set-out to meet a specific client need. This may be appropriate for the small range of products designed to be held as standalone investments but does not reflect the best interests of investors who are seeking diversification. The expectation expressed in the proposal paper is that where a product is to be used as part of a broader portfolio the issuer should "identify how the product is intended to fit into the broader portfolio." [1] An asset manager cannot do this particularly if the portfolio is made up of products from other asset managers such as would occur if the investor is investing via a platform. We do not believe that the issuer is the correct party to undertake an assessment of the portfolio weighting of products especially without detailed knowledge of the end clients' investment goals or the potential return and risk targets of other, potential competitor, products the end client may consider investing in their portfolio. Furthermore, platform providers typically select products in order to achieve specific strategies for which they are implementing and in turn selected products are made available to all investors who have access to the platform. While the asset manager could provide information on certain factor relevant to the underlying platform clients, such as anticipated time horizon, volatility and liquidity, the

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asset manager cannot determine objectively if the products meet the needs of the platform clients given the lack of transparency at client level.

This requirement borders on advice and given the potential diversity of investors and investment goals it is virtually impossible to define he maximum percentage a product should comprise of the end client's diversified portfolio with any accuracy. We are concerned that this proposed requirement will increase licensing compliance risk for issuers and also increase an issuer's liability risk if the investor misinterprets any theoretical portfolio construction recommendations the issuer may provide.

We believe that much of the information that defines a target market is already available to investors and may just need to be presented in a different way. We note from the consultation relating to ASIC Regulatory Guide 224 *Facilitating electronic financial services disclosures,* that industry is generally accepting of the need to change the way disclosures are made to increase understanding and reduce consumer behavioural biases. We would encourage ASIC to take this opportunity to standardised target market disclosures across the industry and encourage issuers and distributors to take advantage of technologies to deliver relevant and focussed information to consumers.

Question 11: 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)?

Not applicable to BlackRock.

Question 12: 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.

For asset managers the proposal regarding the selection of distributors is problematic. Many asset managers do not operate an end to end manufacturing and distribution process and often rely on third party distributors. Distribution of a financial product by a third party cannot be treated as an outsourcing activity giving rights of control and access to data. These types of contractual provisions are indicative of an arm's length arrangement rather than a delegation. The complexity of intermediated distribution and the nature of the distribution chain is such that there is often no legal engagement between the asset manager and the distributor of the product to the end client. It is normally the distributor that selects the asset manager and imposes requirements such as detailed service level standards, product price etc. on them. Asset managers undergo rigorous due diligence assessments by the distributors in order to have their products selected for approved product lists. Many asset managers have not had distribution agreements in place since Future of Financial Advice ("FoFA") legislation was released and any changes to pre FoFA arrangements could void grandfathering provisions. Should we be required to amend agreements to facilitate the data reporting required to manage target market assessments and distributor relationships we will require time to negotiate these changes. The arrangements being proposed are too broad at present to enable us to determine what action we would be required to take, but it may include the need to seek legal advice on how we could compel a non-affiliated company that is not a service provider to commit to providing this type of data to us.

Question 13: 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?

Refer to questions 10 and 12.

Question 14: 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?

BlackRock supports the proposal that issuers should be required to periodically review their products to ensure they remain fit for purpose and continue to meet their stated objectives. We do not agree with the inference that asset managers should be considered responsible for any actions taken by distributors in their course of business. We strongly believe that, while it may be the duty of asset managers to provide distributors with sufficient information on their financial products to allow distributors to assess the suitability of the products for their individual clients, it is not the role of the asset manager to assess compliance of the distributor with suitability requirements.

The proposals impose an unreasonable duty of care on a contractual, commercial relationship. It will impose a duty on asset managers to take express action against a distribution partner who may be **s**elling their product outside of the intended target market and recommend appropriate modifications of their sales procedures. It is unclear how this obligation could be monitored or how a contract could impose remedies. It is our belief that the distributor should have the freedom to sell a particular product as they see fit as their decision to market that product is driven by the distributor's assessment of the suitability of the product for their end client's needs. Each distributor is an AFS licensee and subject to an express duty of care to their clients. The distributor may have a reasonable basis on which to depart from the issuer's assessment particularly if the distributor is offering a holistic client solution rather than a single investment. The distributor is generally not a delegate or agent of the asset manager and in the majority of cases, they are separate and non-affiliated companies. Issuers will not normally have access to the distributor's risk assessment of the client nor an overview of the client's entire portfolio. Therefore it is difficult to see how the issuer could in fact make a judgement call as to whether products have been mis-sold or not. The investment that issuers may be aware of (their own product) could be a small part of a larger investment portfolio which, together, meets the client's risk project and objective. We believe that it is more important to focus on the risks and controls the distributor has in place to ensure that the distributor has the right processes to distribute the products. A regulator and/or the distributor's own compliance function would be in a much better position to identify mis-selling issues than the issuers.

We do not believe that the asset manager is in a position to intervene in the determination of the target client group at the distributor level. The asset manager could potentially discuss any discrepancies they identify on an exceptions basis from data provided by the distributor but must not be held responsible for the oversight of the distributor's business or be liable for any shortcomings in the distributor's processes.

We are concerned that communicating changes in the target market to investors who are not advised creates the risk of licensed entities not being in full compliance with their license authorisations. For example, issuers would identify changes in the target market and make a disclosure about the changes to the distributors. The distributors would, in turn, contact their clients to advise them of the changes. If the investor is an advised client their financial adviser can meet with them to discuss the changes and determine if the product is still suitable. Investors who are not advised will receive the information but if the distributor discusses the changes with the investor and their AFS licence does not allow them to provide personal product advice they are restricted in what they can say to the investor as the discussion could be construed as advice. If the investor remains within the product when the target market has changed it is unclear what action an issuer or distributor can take to move them without breaching their license conditions. ASIC guidance, and possible relief, would be required to cover such scenarios.

Currently there is little existing infrastructure for sales reporting back to issuers from distributors. The absence of a standardised framework will significantly hamper the industry's delivery, particularly in relation to intermediated distribution, where the number and the complexity of relationships make bilateral feedback impractical. BlackRock is supportive of cross-industry efforts to develop a standardised infrastructure which

would have a number of benefits and it is important that it is designed in such a way to yield more than just data but to provide useful information.

Question 15: In relation to all the proposed issuer obligations, what level of detail should be prescribed in legislation versus being specified in ASIC guidance?

We would also request that a safe harbour protection be inserted into the legislation which would give issuers defence from action taken by distributors and consumers as long as their processes are sound. This should include situations where the issuer was dependent upon information provided by the distributor for product reviews when it is found that the information is defective. ASIC would need to provide clear guidance on the workings of the safe harbor protection.

We would also request the insertion of a whistleblower protection into legislation to protect issuers who terminate or report a distributor for mis-selling.

We believe that the design requirements should be standardised and the requirements of the framework should be set out in regulation. The guidance should provide baseline requirements for the conduct of a product review. We do not believe that prescription around how product reviews are undertaken would be of benefit. To implement the proposals and deliver better outcome to investors, investment firms will need to undergo significant system builds to communicate and digest the information about target markets and sales. This is a challenging exercise for all parties involved. The clearer the guidelines and expectations of the regulator are the more likely it is that the legislator's expectations can be met and investors continue to have access to all the different types of investment products that can help them achieve their investment aims.

If asset managers are to require to obtain data from distributors to undertake target market assessments we believe that the distributors should be compelled under legislation to respond to reasonable requests for information and that the asset manager has the right to notify ASIC of situations where the information is not forthcoming without penalty to the asset manager. A minimum standard for information requests could be set out in ASIC guidance.

Question 16: 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?

Refer to question 12.

We understand Treasury's intentions that periodic information about the practical experience with product distribution could be useful for issuers in their product review process. It is important to keep the respective responsibilities of the two investment firms clear and separate, as each firm is responsible for their own promotional material it has produced. It will be easier for distributors to do this if a standard framework is in place.

We reiterate our earlier point that target market assessment will be different for both. Issuers are not normally in the position to be able to assess whether individual sales made by the distributor are consistent with target market analysis without redoing the suitability analysis conducted by the distributor. Rather, it is for the distributor to put in place suitable governance to review internal suitability decisions. Furthermore, we believe that a requirement for distributors to regularly review the financial instruments they offer or market would be sufficient to warrant regular information exchanges between issuers and distributors. We do not see any further need to regulate specific responsibilities of the distributor and/or the issuer.

Question 17: To what extent should consumer be able to access a product outside of the identified target market?

We believe that an investor should be able to make an informed decision, based upon all material available to them, to go outside a target market assessment particularly when they are attempting to diversify a

portfolio. Retail investors have a 14 day cooling off period under current legislation. Once the election to ignore a target market recommendation has been made we believe that some protections should be made available to issuers and distributors so that action does not arise if the investor decides that they have made an incorrect decision outside the 14 day cooling off period.

Question 18: What protections should there be for consumers who are aware they are outside the target market but choose to access a product regardless?

The consumer should have access to the current protections available to retail clients, including access to external dispute resolution. It is our opinion that no additional protections are required.

The investor needs to bear some of the responsibility for their choice of investment particularly if they have decided not to seek advice. The core to the financial services regulatory environment since the implementation of FSR has been clear, concise and effective disclosure. Risks are clearly outlined in disclosure documents which investors need to read if they are going to ignore the target market recommendation. The issuer and distributor cannot bear responsibility for the investor's decisions particularly is all disclosures are made available and are clearly stated.

Question 19: 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?

Asset managers operating with an intermediated distribution network will need to have access to sales data of the distributor. If the proposed obligations are enacted, distributors must be legislatively required to provide a standard set of data for the asset manager to undertake effective target market reviews. If the target market framework is not standardised and data is coming in different formats from different sources the process becomes more difficult. If the information comes from one source and not another the view is distorted

Question 20: In relation to all the proposed distributor obligations, what level of detail should be prescribed in legislation versus being specified in ASIC guidance?

Refer to Question 15.

Question 21: 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.

There are a range of practical issues involved in making the necessary process and systems changes to accommodate the Product Design and Distribution rules. We believe that a 6 month transition period for substantive and significant legislation such as this is too short a timeframe. We believe it would be more appropriate to have a longer initial transition period of 18 months for new products and an additional 6 months for existing products. As a reference, the work on EU target market framework has been ongoing for more than 12 months and is still evolving. We believe a longer period will allow the industry to develop a more comprehensive operating model to address the complexities that are involved.

Question 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.

We believe that a longer transition period be considered to allow the industry time to work through systems and processes. Again, we believe that consideration should be given to the potential impacts of the proposed changes on products that are closed to new investors. We suggest that these be excluded from the requirements as they are no longer available for new investment.

Question 23: 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.

Interventions in relation to product features, investor type, product banning or distribution restrictions should only be required where there has been a breach or suspected breach of the law. Prior to any exercise of the power, consultation with the affected issuer or distributor with clear rights to natural justice must be a mandatory requirement. The clear understanding by industry of the circumstances of when ASIC may exercise these powers is critical, noting that in practice, ASIC may not in fact formally exercise these powers but will achieve changes in market behaviour in suggesting that such powers could be used, presenting the opportunity for the issuer or distributor to voluntarily change their behaviour. Industry should be clearly aware of such circumstances in order to understand how the regulatory regime will operate.

Question 24: Are there any other types of interventions ASIC should be able to make (for example, remuneration)?

BlackRock supports the FSC position on the types of intervention powers that should be available to ASIC and that interventions such as banning, change of features or distribution restrictions should only occur where there has been a breach or suspected breach of the law.

Question 25: 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?

We believe that the definitive test of consumer detriment should be a view, made on reasonable grounds, that there is a reasonable chance of there being a significant financial detriment to investors. The relevant risk level should be considered in the context of the type or class of consumer. Clear guidance on what factors are being applied and the steps involved in an investigation will need to be made available to the industry with disclosure of actual cases in practice to demonstrate how ASIC are applying these powers.

Question 26: 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?

We support a requirement ASIC to consult with issuers and distributors prior to exercising an alternative power. The industry needs clarity from ASIC on why they have objections to a product. ASIC must provide reasons why the remedy proposed is more effective than another and then allow time for the party to adjust if feasible. Consultation must be a private matter with no pre exercise of a power and must give reasonable opportunities to respond. In addition, any consultation must add value by being specific, commercial and actionable.

We support the proposal that ASIC investigations must progress through a series of procedural steps that provide for active due process prior to any intervention being initiated and any information being released to the public. Companies should also be given the right of appeal before any information on the investigation becomes public.

Question 27: 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?

There are enormous and wide ranging reputational impacts on financial services firms if information on interventions is published before any breach of the law has been proven. Publication of information on proven breaches, consumer detriment and ASIC's consideration of alternative powers, after the event, would assist the industry by providing lessons learned information which could be used as part of continuous review and improvement of compliance programs.

Question 28: 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.

BlackRock has no objection to the proposal that an intervention apply for 18 months with no extension. We are of the opinion that by the time the power has been exercised whatever practice ASIC has objected to will have been corrected by the entity being investigated.

The ability to have the duration of an intervention reduced, either after an appeal or if ASIC determines that appropriate action has been taken to correct the problem, should be included in the legislation.

Question 29: 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?

Given the nature of the power and the impact its exercise would have, we believe that an 18 month cut-off is appropriate

Question 30: 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?

The mechanism employed by Government needs to be something substantial and cannot be another instrument on the ASIC website that is difficult to find. With any permanent change industry would expect normal consultation and the ability to respond. Guidance from ASIC on how they intend to use the powers should be released as quickly as possible to enable the industry adequate time to consider the implication of changes on their internal frameworks and operational procedures.

Question 31: Are there any other mechanisms that could be implemented to provide certainty around the use of the product intervention power?

We support the FSC's position that the intervention power should only be used to ban a product, change features or restrict distribution in cases of actual or suspected breach of the law.

Prior to any exercise of the power pre-consultation with the affected issuer or distributor will be extremely important.

Question 32: Do you agree with the powers applying from the date of Royal Assent? If not, please explain why with relevant examples.

It is our belief that any new intervention powers given to ASIC should commence at the same time as the product design and distribution obligations come into effect. If ASIC begins to use their intervention powers before industry has had an opportunity to embed new frameworks and processes a soft touch approach should be considered. Please refer to previous comments on the need for a suitable implementation period,

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Question 33: What enforcement arrangement should apply in relation to a breach of the design and distribution obligations or the requirements in an intervention?

ASIC already has the power to take action to protect investors through administrative, civil and criminal remedies.

Question 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?

In regards to the products issued by BlackRock, it is our opinion that consumers have enough protections under current arrangements including the cooling-off period for return of financial product under section 1019B of the Corporations Act and their ability to have a complaint heard by an independent external dispute resolution scheme.

BlackRock does not believe that any changes to the current avenues of redress are required.

Attachment 1 Proposed EU Target Market Framework

Target Market Framework			Options (for each option, unless stated otherwise)
Client Type	• Retail • Professional • Eligible Counterparty		*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)* *Blank = Manufacturer wasn't designing the product for this use but accepts it may be compatible*
Knowledge & Experience	• Basic • Informed • Expert		*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)*
Ability to bear losses	• The investor seeking to preserve capital or can bear losses to a level specified by the product structure • The investor can bear losses • The investor can bear losses beyond the investment amount		*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)*
Client objectives	**Return profile:** • Preservation • Growth • Income • Other	**Time Horizon:** • Short (e.g. <3 years) • Medium (e.g. > 3 years) • Long (e.g. > 5 years)	*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)* *Blank = Manufacturer wasn't designing the product for this use but accepts it may be compatible*
Client needs	**Usage:** • Solution • Core or Component of a Portfolio • Hedging • Speculation • Other e.g. Sharia, Ethical, Tax mgt	**Access (withdrawals):** • Ready access – normal market conditions • Ready access with restrictions • Access uncertain	*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)* *Blank = Manufacturer wasn't designing the product for this use but accepts it may be compatible* *Access – Y for one option only, N for the others.*
Risk	• SRRI (or equivalent) • Key risks of which the investor must be aware		*SRRI is a simple integer 1 – 7* *Key risks*
Distribution Strategy			
Channel	• Execution Only – retail (RTO) • Execution Only with Appropriateness Assessment – retail (RTO) • Investment Advice - retail • Portfolio Management - retail • Non-Retail	Note: Local strategies such as placement (Italy) and marketing/ guided sales (Spain) also remain under discussion	*Y = Directly in the target market* *N = Clearly outside of the target market (Negative Target Market)* *Blank = Manufacturer wasn't designing the product for this use but accepts it may be compatible*