

Submission on ASIC Consultation Paper 260 – Further measures to facilitate innovation in financial services

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make a brief submission on the ASIC Consultation Paper 260 – Further measures to facilitate innovation in financial services.

NIBA represents over 300 insurance broking firms across Australia, the majority of which are small to medium businesses. Insurance broking firms provide traditional insurance broking and risk management advice in the areas of property and liability insurance, and in many cases broking firms also provide advice in relation to life risk insurance. Insurance intermediaries place around \$18.5 billion in insurance premiums each year, approximately half the annual general insurance premium pool in Australia.

NIBA is grateful for the opportunity to provide these brief comments on ASIC CP 260.

Innovation, flexibility and consumer protection

NIBA is a strong supporter of innovation and flexibility in the provision of financial services and advice. Many insurance brokers are regularly introducing new and different means of providing products and services to personal and commercial consumers and clients.

This innovative activity is undertaken at the present time using the flexibility offered by the ASIC regulatory framework, which is outlined in the Consultation Paper. In doing so, entrepreneurial insurance brokers are conscious of the overall scope and objectives of the regulatory framework, and find ways to meet those requirements.

One common way for the introduction of innovative products and services is by making use of the authorised representative provisions. NIBA notes that ASIC does not have a preference about whether a business has its own licence or operates as a representative of a licensee.

Proposal A1

NIBA's preference is for ASIC to maintain the status quo in the application of regulatory requirements to new and innovative business models.

As noted above, the current framework allows a wide range of business models and operating structures, and ASIC has been adopting a cooperative and proactive approach to new and different proposals for offering financial products and services.

At the end of the day, though, the regulatory framework exists for strong and valid reasons, and is designed to provide strong consumer protection regardless of the business model adopted by the licensee or their representative. NIBA is concerned that changes to the current framework would have the potential to reduce the effectiveness of the consumer protection measures currently in place.

NIBA is also firmly of the view that there should be a level playing field in the application of the regulatory framework for financial services and advice. Insurance brokers holding AFS licences go to considerable effort and expense to put in place systems and processes to ensure that they and their representatives are complying with the regulatory requirements at all time.

We believe anyone wishing to commence business or develop new lines of business in the area of financial products, services and advice should similarly commit to meeting and observing the requirements of the regulatory framework.

Proposal B1

NIBA does not object and in fact would support ASIC providing additional guidance regarding the assessment of a responsible manager's knowledge and skills under RG 105. We note ASIC does not propose to change how it assesses submissions under RG 105. Providing additional guidance in relation to the application of RG 105 does not diminish our preference for a level playing field across all business models.

Proposal B2

NIBA urges ASIC to exercise extreme caution in relation to how the responsible manager requirements are to be satisfied.

As noted in the Consultation Paper (paragraph 42), the responsible manager must have direct responsibility for significant day-to-day decisions regarding the licensee's products and services.

While it is true that a small scale, heavily automated business would require important decisions to be made during the design and implementation of the business model, our understanding is that automated and digital advice models regularly provide an opportunity for those using the service to seek help, support or advice when they feel the digital advice is not appropriate or they are unsure with the nature of the digital advice that has been provided. In other words, there are important roles for a properly qualified responsible manager at the initial stages of the business, but that role should and must be maintained to ensure the business can continue to deal with exceptional cases and specific requests for advice as and when they arise.

In addition, as heavily automated business models for financial products and services are still in their relative infancy, NIBA believes it will be important for qualified and experienced responsible managers to monitor, on an ongoing basis, the nature of the advice, products and services that are being provided by the business, and to determine whether the products and services are actually operating for the benefit of and in the best interests of the client.

If there is to be third party sign off in relation to organisational competence, NIBA strongly believes the third party should itself be fully qualified and experienced to provide the products, services and advice that is being offered. We believe that an accountant or an auditor would not necessarily have this knowledge or experience.

Proposal B3

NIBA has strong reservations in relation to the concept of a professional third-party responsible manager. As the Consultation Paper itself notes, RG 105 requires the responsible manager to have direct responsibility for significant day-to-day decisions about the licensee's products and services. Having some form of annual sign-off appears to be completely contrary to the need for an experienced and responsible manager having direct oversight of the business operations of the licensee.

Proposal B4

The delivery of poorly designed insurance products to up to 1,000 people over a reasonably short period of time would be likely to cause serious issues for the clients and consumers of those products. The fact that the product was issued by a prudentially regulated business does not provide additional protection if the product was of no use or benefit, or was not in the best interests, of the client.

Proposals C1 and C2

NIBA has serious concerns in relation to the prospect of a financial sector service provider operating without an AFS licence for up to 6 months. We note Proposal C2 limits the scope of this proposal to listed or quoted Australian securities, simple managed investment schemes and deposit products. We would have serious concerns if the proposal was to be extended to general insurance or life risk insurance products.

Our main concern is the fact that serious damage can be done to consumers in a relatively short period of time by the sale of defective products and services, or the delivery of poor quality advice that is not in the best interests of the client. We also confirm our earlier comments to the effect that there should be a level playing field between current and potential new businesses – all should be required to adopt and abide by the regulatory framework for financial products and services.

Thank you for the opportunity to provide these brief comments on CP 260.

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