

**Sydney**  
Level 7, 1 York Street  
Sydney NSW 2000  
t +61 2 8866 5150

**Melbourne**  
Level 17, 570 Bourke Street  
Melbourne VIC 3000  
t +61 3 8594 0267

Ashley Brown,  
Senior Adviser Strategic Policy  
Australian Securities and Investments Commission  
GPO Box 9827 Brisbane QLD 4001  
Email: [product.regulation@asic.gov.au](mailto:product.regulation@asic.gov.au)

5 July 2019

Dear Ashley

Thank you for the opportunity to comment on ASIC's Consultation Paper [CP 313] *Product intervention power*.

Evolution Trustees is a professional trustee focused taking care of other people's money in the global collective investment industry. We operate around 30 managed investment schemes with approximately \$4b in gross assets. As a professional trustee, we are asked to consider providing our services for a range of different financial products – many of which are being designed for the retail market. In many cases we decline to provide services because we consider a product to be inappropriate for retail investors.

ASIC's new intervention powers significantly expand its "regulatory toolkit". As [CP 313] acknowledges, the new power is designed to enable ASIC to "take a more proactive approach to reducing the risk of significant consumer detriment" ([CP 313.9]). We consider the most effective use of the power would be to remove products from the industry **before** they cause significant consumer detriment. While the product intervention powers are not designed to "prevent all monetary losses" the earlier a product is removed, the smaller the impact of the financial product is likely to have.

The focus of our response is to suggest some ways ASIC may use its product intervention powers to address significant consumer detriment before they cause significant consumer detriment. We set out in the annexure our responses to some of the questions posed in [CP 313].

Yours sincerely



Rupert Smoker  
Chief Executive Officer

Question	Response
<p><b>B1Q1 Are there additional factors that ASIC might take into account in determining whether a product has resulted, will result or is likely to result in significant consumer detriment?</b></p>	<p>The language used to describe “significant consumer detriment” in the [RG] is broad and difficult to understand (see the last sentence in paragraph RG000.46). Paragraphs 45 – 54 employ academic concepts rather than real examples. To that end, ASIC should seek to supplement the RG by creating, maintaining and publishing a list of problematic features it considers relevant for each of the financial product within the scope of the product intervention power (RG 000.15).</p> <p>Such a list could be enhanced by assistance from the industry. ASIC’s stakeholder teams should be responsible for establishing systematic processes to maintain currency of “problematic features” lists.</p> <p>For example, from our area of interest (managed investments products), ASIC should flag:</p> <ul style="list-style-type: none"> <li>- High leverage;</li> <li>- Shadow banking products;</li> <li>- Liquidity mismatches;</li> <li>- Excessive fees;</li> <li>- Complicated structures; and</li> <li>- Complicated underlying assets (crypto-currencies, agribusiness).</li> </ul> <p>ASIC should also consider, and provide mechanisms for, industry “tip offs”. For example, where participants in the industry identify a concerning product, or a concerning feature about a class of product, ASIC should provide an appropriate way to appropriately receive this information.</p>
<p><b>B2Q1 Are there any other considerations that we should take into account in determining how we will intervene?</b></p>	<p>In assessing impact, we would suggest ASIC takes significant interest in market conditions and the broader economy. In its determination of “significant consumer detriment” ASIC should be required to consider the impacts if the market conditions changed quickly or slowly.</p>
<p><b>C2Q1 Do you have any feedback on how we intend to describe the significant consumer detriment?</b></p>	<p>ASIC should consider providing information on what (if any) action can be taken by retail investors who already have an interest in the financial product that becomes the subject of the intervention order.</p> <p>For example, ASIC should ensure investors are aware if they a right to redeem their investment in a registered scheme or cancel a product (including costs of doing so).</p> <p>This may assist with equity issues as between prospective investors and existing investors.</p>