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Product Regulation
Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

Via Email: product.regulation@asic.gov.au

The response from Gain Capital Australia Pty Ltd to Consultation Paper 325, Design and Distribution Obligations.

Gain Capital Australia Pty Ltd (Gain) is pleased to provide comments on the consultation paper for Design and Distribution Obligations.

Gain has the following comments regarding the questions posed by the paper.

Responses to the Proposals:

B1Q1 Is our guidance on a robust product governance framework useful? What additional matters, if any, do you think are important in ensuring that a product governance framework will be effective and support compliance with the design and distribution obligations?

Gain considers the guidance useful and have no further suggestions to make regarding additional matters. Gain is both an issuer and distributor of the financial products provided. Gain already conducts suitability testing when a new client is onboarded and by the nature of the OTC derivatives offered, Gain already monitors the product throughout its lifecycle. Gain is of the view that it already has in place a robust governance framework that meets the guidelines provided, except for documenting a target market determination.

B2Q1 Is our guidance on the consumer-centric approach issuers and distributors should take to deliver good consumer outcomes useful?

Gain considers the guidance useful, particularly in relation to consumer vulnerabilities. The financial products and/or services provided to consumers should be clear and transparent and not prey on any aspects of the consumers personal circumstances. The consumers personal circumstances should only be used in a positive manner to assess their suitability for a product.

B2Q2 What additional matters, if any, do you consider to be relevant?

Gain does not have any additional matters it considers relevant at this time.

C1Q1 Do you agree with our approach to guidance on the form and content of a target market determination? If not, why not?

Gain agrees with the approach provided in the guidance. The legislation provides a list of expected content and given the vast range of financial products covered it is hard to provide definitive guidance on the content of the determination for everyone. For example, Gain is a combined issuer and distributor of the product. The target market determination produced by Gain will be inherently different to those where the issuer and distributor are different entities.

C2Q1 Is our guidance on the approach to identifying the target market for new products useful?

Gain considers the guidance useful and notes that it is consistent with current requirements to identify the objectives, financial situation and needs of the consumers.

C2Q2 What additional matters, if any, do you consider to be relevant?

Gain does not have any additional matters it considers relevant at this time.

C3Q1 Do you have any comments on our approach to guidance on identifying and describing the target market?

Gain has no significant comments to make regarding the guidance on identifying and describing the target market. Gain is of the opinion that its target market is clear and is documented in various policies and documents within the organisation, both for compliance and marketing purposes. Gain already considers the class of consumer, their personal circumstances and knowledge of the product being offered when the client is onboarded.

C3Q2 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.66 – RG 000.89:

- (a) Example 1: Credit cards;***
- (b) Example 2: Reverse mortgages;***
- (c) Example 3: cash options in superannuation;***
- (d) Example 4: Consumer credit insurance;***
- (e) Example 5: Low-value products; and***
- (f) Example 6: Basic banking products?***

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C3Q3 *What additional matters, if any, do you consider to be relevant?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C4Q1 *Do you have any comments on our proposed guidance for issuers considering the role of diversification as it relates to their identification of the target market?*

Consumers may approach Gain to diversify their existing retail portfolio using retail OTC derivatives. Gain agrees with the proposed guidance regarding target markets and diversification given that Gain would not offer its product to consumers just because they were diversifying an existing portfolio, those consumers would still need to meet the suitability criteria for the derivative product offered.

C5Q1 *Do you agree that consumer understanding of a product does not necessarily equate to the product being likely to be consistent with the likely objectives, financial situation and needs of consumers in the target market? If not, why not?*

Gain agrees that just because a consumer understands a financial product, it does not necessarily mean that the product will be suitable for them. For Gain, a consumer may understand the nature and workings of an OTC retail derivative but unless they have the financial backing to trade in a reasonable and responsible manner, it is unlikely that the product would meet their financial needs.

C6Q1 *Do you agree that it may also be useful for an issuer to describe the negative target market for its financial product? If not, why not?*

Gain agrees that it would be useful to describe the negative target market. Gain already has in place set criteria for consumers who are not permitted to trade on our platforms.

C6Q2 *Is our guidance on the role of describing a negative target market adequate and useful? If not, please explain why, giving examples.*

Gain considers the guidance provided to be clear and useful and has no further comments to make.

C7Q1 *In relation to our guidance on how a target market determination should be approached for superannuation products, as set out in Example 7:*

(a) Do you agree with our proposed guidance that if investment options are suitable for different groups of members, then the trustee should account for this in undertaking its target market determination for the Choice superannuation product? If not, why not?

(b) What factors do you consider relevant to the grouping of investment options in making a target market determination? Why?

(c) Do you agree with our proposed guidance to consider insurance as part of the target market determination for a Choice product? If not, why not?

(d) How should a trustee take into account insurance in making a target market determination for a Choice product?

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C7Q2 Do you agree with our guidance on the application of the target market determination obligation to IDPS?

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C7Q3 Do you agree with our guidance on how a target market determination should be approached for a bundled product? If not, why not?

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C7Q4 Do you agree with our proposed approach to the application of the design and distribution obligations to products that can be customised at point of sale? If not, why not?

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C7Q5 Are there any particular options or choices, or types of options or choices, that you consider would affect the product's suitability for a consumer if selected? Please give examples.

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C8Q1 Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.107 – RG 000.120:

- (a) Example 7: Superannuation products;***
- (b) Example 8: Investor directed portfolio services;***
- (c) Example 9: Superannuation;***
- (d) Example 10: Mortgage fund; and***
- (e) Example 11: Listed investment companies?***

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C8Q2 *Do you agree with the factors listed in Table 3 of draft RG 000 that we expect will be relevant when considering whether an issuer has met the reasonable steps obligation? If not, why not?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

C8Q3 *What additional factors, if any, do you consider should be included in Table 3 of draft RG 000?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

C9Q1 *Do you have any comments on our guidance on setting appropriate review triggers and maximum review periods?*

Gain has no further comment to make regarding the review triggers and review periods. Gain understands the need for the guidance to be broad given the vast number of financial products and services the guidance applies to. Gain already monitors the lifecycle of the product held by the consumers and will incorporate a periodical review of the target market determination as required.

C9Q2 *Do you have any comments on the following examples, which we have used in our guidance to illustrate key principles set out in RG 000.127 – RG 000.130:
(a) Example 12: Insurance; and
(b) Example 13: Managed fund?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

C10Q1 *Do you have any comments on our guidance on the issuer's obligation to specify information it requires from its distributors?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

C10Q2 *What existing information collected by distributors would be relevant to an issuer's consideration of the ongoing appropriateness of its target market determination?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain already monitors the lifecycle of the product held by the consumers.

C10Q3 *In addition to the information set out at RG 000.139, are there other types of information and issuer should collect from distributors? If so, please describe the type of information you think would be relevant.*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

C10Q4 *What potential effects on competition may occur as a result of the issuer's right to set the information the distributor must provide?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

C10Q5 *Do you have any comments on our guidance on the issuer's obligation to specify the reporting period in relation to the number of complaints?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product. Gain collates this information internally.

C11Q1 *Do you consider our guidance on the types of information issuers should have regard to (described at RG 000.143) to be useful? If not, why not?*

Gain considers the guidance provided to be clear and useful. Gain already collates a significant amount of data on consumer outcomes as both an issuer and distributor of the product. The types of information detailed in the guidance is very similar to the type of data already collated by Gain.

C11Q2 *In addition to the data sources described in draft RG 000 at RG 000.143(a) – RG 000.143(d), are there other sources of information that you think an issuer should take into account in reviewing a target market determination?*

Gain does collect additional information regarding consumer accounts, such as number of margin calls, however these are specific to the retail OTC derivatives sector and would not be included in the guidance provided. Gain would include such data in its target market determination review.

C11Q3 *Do you have any comments on our guidance on conducting a review of a target market determination?*

Gain has no further comment to make regarding a review of the target market determination.

C12Q1 *Are there any additional factors that issuers should consider? If yes, please provide details.*

Gain considers the factors noted in the guidance regarding significant dealings to be sufficient.

D1Q1 *Do you agree with the factors listed in Table 5 of draft RG 000 that we will take into account when considering whether a distributor has met the reasonable steps obligation? If not, why not?*

Gain agrees with the factors listed in table 5. The factors are consistent with Gain's existing obligations under the Corporations Act provisions and AFSL regime.

D1Q2 *What additional factors, if any, do you consider should be included in Table 5 of draft RG 000?*

Gain considers the factors identified in table 5 to be robust and has no additional factors to suggest.

D2Q1 *Do you have any comments on our proposed guidance for distributors in Example 14 of draft RG 000?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

D2Q2 *What other steps or controls, if any, do you consider would be appropriate for a distributor to consider what reasonable steps should be taken at renewal?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides.

D3Q1 *Do you agree that, in most cases, a distributor would have sufficient information about a consumer through its existing sales processes to form a view on whether the consumer is reasonably likely to be in the target market for a financial product?*

Gain agrees, as both an issuer and distributor, that a distributor would have sufficient existing information about the consumer through its existing sales process to assess whether the consumer is in the target market.

D3Q2 *What data do you consider would help distributors reasonably conclude that a consumer is reasonably likely to be in the target market for a financial product?*

Gain considers the guidance provided to be robust but particularly agree with the use of 'knockout questions' within the application process. Gain already poses questions regarding client's financial situation and product knowledge and will reject the application if required.

D3Q3 *Do you consider our guidance should identify (in draft RG 000 at RG 000.168) other ways that a distributor's sales processes can assist it to form a reasonable view that a consumer is reasonably likely to be in the target market for a financial product? What other approaches can be taken?*

From Gain's prospective there is no need to provide other ways to ensure the consumer is in the target market. Gain provides general advice only to its clients and must balance the requirement to attain enough information regarding the client to ensure they meet the target market

determination, but not so much information that the client considers that they will be receiving personal advice regarding the financial products and services.

D3Q4 *Do you have any comments on our proposed guidance (in draft RG 000 at RG 000.169) on how a distributor could reduce the likelihood of leaving a consumer with the impression that their personal circumstances have been considered?*

As stated above, for those entities such as Gain who provide general advice, there is a balance to be sought regarding how much consumer information is collected. One mitigating factor is that Gain consistently repeats its disclaimer, both verbally and on platform, that it only provides general advice.

D4Q1 *Do you have any comments on our proposed guidance on the content of the reasonable steps obligation in these circumstances?*

Gain does not agree with the proposal that distributors can sell to consumers outside of the target market should reasonable steps be taken. From Gain's perspective the purpose of the target market determination is to clearly define to whom a product can be sold. Allowing for any deviation from this objective reduces the value of having the target market determination.

D4Q2 *Are there any specific methods that you consider our guidance should identify for distributors seeking to meet the reasonable steps obligation in the context of interacting with consumers who are outside the target market for a financial product?*

As stated above, consumers outside the target market, once identified by the distributor, should not be provided that financial product or service.

D5Q1 *Do you agree that a target market determination for a financial product should be considered by a financial adviser in providing the advice and meeting their best interests duty? If not, please explain.*

Gain has no comment to make regarding this question as it does not provide personal advice.

D6Q1 *Do you have any comments on our proposed guidance on using information gathered for the purpose of meeting responsible lending obligations to assist a distributor to form a reasonable view on whether a consumer is reasonably likely to be in a target market for a financial product?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

D6Q2 *Are there any further issues you consider are raised by the interaction of the two regimes that should be dealt with in our guidance? Please explain.*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

D7Q1 *Do you think it would be useful to provide guidance on the following arrangements between issuer and distributor:*

- (a) whether there is a need for information requirements to be set out in an agreement between the issuer and the distributor;*
- (b) the format of information exchange; and*
- (c) the mode of delivery and communication of information?*

If so, what considerations are relevant to these factors?

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

D7Q2 *Are there other considerations that need to be taken into account in the collection and exchange of information between an issuer and a distributor?*

Gain has no comment to make on this point as it does not relate to the financial services Gain provides. Gain is both issuer and distributor of the product.

E1Q1 *Do you agree with the factors that we will take into account when considering whether to provide an exemption from, or modification to, the design and distribution obligations? If not, why not?*

Gain agrees with the factors identified and has no additional comment to make.

E1Q2 *Are there any additional factors that you consider we should take into accounts?*

Gain does not have any additional factors to suggest.

E2Q1 *Do you agree with our proposed approach to relief from the design and distribution obligations when disclosure relief has been granted in relation to a financial product? If not, why not?*

Gain agrees with this approach given the two different focuses of the obligations, disclosure being to provide consumers with upfront information about a product whilst design and distribution relates to the needs of the client, a consumer-centric focus and the ongoing suitability of the product to the consumer over the lifecycle of that product.

Thank you for the opportunity to participate in this consultation process. We are happy to engage in further discussion and please do not hesitate to contact us for any further assistance.

Yours sincerely,



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