



20 February 2018

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

By email to productregulation@treasury.gov.au

Re: Design and Distribution Obligations and Product Intervention Power

Thank you for the opportunity to comment on the draft legislation to put in place design and distribution obligations in relation to certain financial products and to provide ASIC with an explicit product intervention power.

ASX would like to reiterate the views expressed in its March 2017 submission to the earlier consultation on these measures.

In particular, ASX submits that the coverage of the new design and distribution obligations should explicitly exclude products that are listed or quoted on a licensed financial market, not only ordinary shares. The suite of existing products (i.e. exchange traded funds (ETFs), other structured products, and exchange-traded options, warrants and futures) are already familiar to many retail investors.

These products are also already subject to a range of measures designed to protect (particularly retail) investors. These measures govern product design and distribution and include the operating rules of licensed markets and other regulatory requirements, such as the ASIC Market Integrity Rules.

These existing measures provide an effective regulatory framework designed to achieve similar objectives to the draft legislation, namely that 'products are designed with consumer needs in mind and are marketed at appropriate sections of the population'. The regulatory authorities are well placed to impose appropriate regulatory standards with regards to these products.

For example, market operating rules are subject to oversight and formal approval by ASIC. This provides an effective regulatory control over existing products and also provides the ability to shape the design of new products, if necessary, particularly where they are made available to retail investors.

In the case of more complex products (such as futures, options and warrants) ASIC's market integrity rules require that brokers providing advice on these products must have appropriate professional accreditation, and that retail investors receive information on the products risks and have signed a client agreement acknowledging those risks.

In these circumstances, applying an additional regulatory layer that overlaps with the existing requirements is inefficient and imposes unnecessary regulatory compliance costs on issuers and market participants without enhancing protections for investors.

Further, while the principles-based approach to the legislation provides flexibility in applying the new regime the lack of detail creates uncertainty amongst entities about how to interpret the new requirements. It is hoped that ASIC regulations and guidance will provide greater certainty around key definitions, how the new requirements will apply in practice and examples of how entities can meet their regulatory obligations.

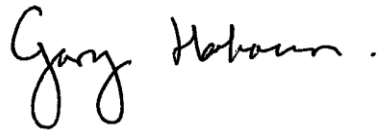
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ASX would be happy to participate in any industry level discussions with ASIC to work through some of the issues to provide a greater degree of clarity about how the new provisions will work.

Kind regards



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Regulatory and Public Policy

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