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Design and Distribution Obligations and Product Intervention Power
Draft Legislation and Explanatory Memorandum

Thank you for the opportunity to provide comments on *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017* (the Bill) and the *Exposure Draft Explanatory Memorandum* (the EM).

This submission sets out AFMA's comments firstly in relation to the design and distribution obligations (DDOs), followed by the product intervention power (PIP).

Design and distribution obligations

1. Section 993DB – scope of financial products covered

Section 993DB(1) states that the section applies to a financial product if:

(a) An offer of the product would need disclosure to investors under Part 6D.2; or
(b) Under Part 7.9 a Product Disclosure Statement must be prepared or given for the product; or
(c) A recognised offer is proposed to be made in relation to the product; or
(d) The product is of a kind prescribed by regulations made for the purposes of subsection (7).

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The section does not apply to a MySuper product, a margin lending facility, shares in an employee share scheme, ordinary shares in a company, or a financial product prescribed by regulations made for the purpose of the paragraph.

AFMA understands the rationale for excluding the types of financial products listed in section 993DB(2) from the regime, on the basis that they are relatively simple and/or are already separately and sufficiently regulated.

However, as per our submission in March 2017 in response to the December 2016 Proposals Paper, we remain of the view that additional categories of products should be excluded from the regime for the same reasons.

Basic banking products should be carved out on the basis they are simple and easily understood products, and almost everyone is in the potential target market. It is not clear what regulatory benefit will be achieved by applying the regime to a class of products that is already comprehensively regulated and readily understood by the general public.

Alternatively, consideration should be given to addressing these products through the implementation of the FSI recommendation that simple low risk products such as basic banking products would not require extensive consideration and may be treated as a class, with a standard approach to their design and distribution. Ideally this should be addressed in the legislation, but could also be dealt with by way of ASIC guidance.

In addition to ordinary shares, other products listed or quoted on licensed financial markets should also be excluded. Market operators and ASIC regulate these markets and there is enhanced transparency available through the markets. This includes exchange traded funds, warrants and other structured products, exchange traded options and futures. These products are already subject to a range of controls under the Corporations Act, as set out below, including additional requirements for products such as futures, options and warrants. It also seems unusual to discriminate between ordinary shares and other ordinary securities (such as interests in listed unit trusts) as these products are used predominantly to provide a basic economic interest in an operating business.

While we understand hybrids are within the scope of the obligations, industry would appreciate clear guidance from ASIC dealing specifically with hybrid offers and distribution. We also encourage Treasury and ASIC to consult with APRA, the ATO and other relevant regulatory agencies on how this might impact other policy aims.

Controls applying to listed financial products have been developed over a number of years through consultation between regulators, markets and the financial services industry and operate very effectively. As new types of products evolve market operators and ASIC have the ability to introduce new controls if required. Imposing any further controls on listed products would result in regulatory duplication, which may cause product offerors to prefer the unlisted market. This is not a desirable outcome as the listed market functions well to provide customers access to products within a well-regulated framework.

Product design

- Requirements relating to the design of the products are set out in the Operating Rules of the market. For example, the ASX Operating Rules set requirements for the design of ETFs, warrants and exchange traded options. Under the Corporations Act the rules require regulatory clearance from the Minister (or ASIC as the Minister's delegate) before they come into effect. Matters which are considered in the regulatory clearance process include:
  - The nature of the financial products
  - The participants or proposed participants of the market and whether those participants are retail or wholesale clients
  - Whether rule amendments are in the public interest (Corporations Act ss 793D, 793E and 798A).
- Rules are reviewed by ASIC as part of the regulatory clearance process which has regard to the matters listed above, with a particular focus on products targeted at retail clients.
- The market operator enforces the rules, and it is a condition of its licence that it has adequate arrangements to monitor and enforce the operating rules (s792A).

Product distribution

- Participants (brokers) who distribute these products are subject to ASX or Chi-X Operating Rules. These rules include requirements concerning:
  - Access to the market
  - How trading can be conducted
- If a participant breaches the rules a market operator can take enforcement action against it.
- Brokers are also subject to the ASIC Market Integrity Rules (MIRs - Competition in Exchange Markets) and the MIRs for the particular market. These MIRs include:
  - Achieving best execution for clients (i.e. the best possible price)
  - Client relationships
  - Trading (e.g. client order priority and prohibition on manipulative trading)
- If a participant breaches the MIRs ASIC can take action against it.
- For certain products, such as futures, options and warrants, there are additional requirements under the MIRs that:
  - Clients are given an information booklet
  - Clients enter into a client agreement acknowledging the risks of the product and that the client has read the product information
  - Participants giving advice on these products must have undertaken specialist accreditation.
- Products offered on ASX's mFund managed fund settlement service are subject to additional protections to ensure that clients are aware the service provides settlement but not traded on a market. The protections include a requirement that the broker give the client a copy of the PDS and Investor Fact Sheet and

advise the client or prominently display a message (for online trading) that the service does not involve trading (ASX Operating Rule 4655).

Product intervention in relation to listed products

- ASIC has a power to direct a market licensee to suspend dealings in a financial product or class of financial products or give some other direction if ASIC is of the opinion that this is necessary or in the public interest to protect people dealing in those products. The direction is enforceable by a court (s794D).
- ASIC has a similar power to direct any other entity to suspend dealings in a financial product or class of financial products or give some other direction if ASIC is of the opinion that this is necessary or in the public interest to protect people dealing in those products. The direction is also enforceable by a court (s798J).

Once a product enters the secondary market, issuers lack the visibility and contractual links required for an issuer to monitor and or/control the conduct of distributors. Similarly, decisions about whether to hold or on-sell a product in a secondary market is at the discretion of individual investors, and may result in a product coming into the hands of an investor who is not in the target market for the product.

From a consumer protection perspective, the regulatory focus should be on more complex products. Alternatively if all products apart from the stated exclusions are to be included, consideration should be given to implementation of a less onerous set of requirements for the simpler, more straightforward financial products.

The EM states at paragraph 1.23 that ordinary shares are excluded as they are fundamental to corporate fundraising and because there is a level of understanding regarding such securities among consumers. Based on the second part of that analysis, certain investment products (such as interests in managed investment schemes) should also be excluded from the regime. These products are also widely understood by consumers and are often used in fundraising activities. Additionally, the existing licensing, registration and disclosure obligations already contain strong retail investor protections in the context of advice and distribution of these financial products.

This would be more consistent with the recommendation of the Financial System Inquiry and seems to be more in line with the apparent intention of the proposal as put forward by the inquiry, which appears to be largely focussed on improving conduct in relation to the issue and distribution of insurance and risk management products as opposed to more mainstream investment products.

A key focus of global regulators is the mis-selling of complex products, on the basis that the risk of mis-selling increases in line with the complexity of the financial product. To reduce compliance cost and regulatory burden, a risk-based approach proportionate to the risks of detriment to retail clients would create a better balance between the ability of issuers to continue to issue well-understood products in compliance with existing disclosure and other regulatory requirements, and the need to provide greater protections to investors in relation to more complex products.

This approach is in line with the AFMA Guidelines for product approval of retail structured financial products, the IOSCO Principles for regulation of retail structured products and ASIC Report 384 on regulation of complex products.

According to the IOSCO report issued in 2013, the following are common features of many complex products:

- terms, features or a complex structure that are not likely to be reasonably understood by an average investor (as opposed to more traditional and simpler investment instruments);
- difficulty in valuations (i.e. valuations requiring specific skills and/or systems); and
- very limited or no secondary market (in which case the products are potentially illiquid).

2. Secondary market transactions

As noted above, once a product enters the secondary market, issuers lack the visibility and contractual links required for an issuer to monitor and or/control the conduct of distributors. Similarly, decisions about whether to hold or on-sell a product in a secondary market is at the discretion of individual investors, and may result in a product coming into the hands of an investor who is not in the target market for the product.

While section 993DB(10) appears to be worded in such a way that only the initial offer to acquire a product under a disclosure document is captured by the regime, and not any subsequent secondary market transactions in that product, other provisions (eg. section 993DB(9)) can be read as suggesting that if the offer of the financial product required a disclosure document in the first instance then the DDOs will continue to apply to any subsequent dealings in those products. Similarly, section 993DE(3) suggests that only the initial offer is captured although sections 993DE(1) and (2), by using the word “dealing” (which includes secondary sales) suggest that secondary sales are captured.

Further, section 993DD makes it an offence for a regulated person (including a financial service licensee) to deal in or advise on a product unless a target market determination has been made. In the context of listed products, for example, a stockbroker trading a newly-issued fund unit on ASX will be guilty of an offence if unbeknownst to the broker the issuer has failed to make a target market determination. Particularly for quoted or listed products, the onus for making such a determination before trading begins should lie with the responsible person. It also is difficult to see how this section works practically in the case, for example, where an investor calls a licensed adviser about whether they should consider a forthcoming IPO that is rumoured in the press. Such an activity is clearly legitimate, but the adviser runs the risk of being criminally liable in responding to the investor unless the issuer has made its target market determination (TMD).

It is recommended that to put this beyond doubt, the legislation should be clarified to make it clear that the TMD and section 993DE obligations do not apply to secondary sales of financial products including trading on financial markets. We also recommend

that Treasury should review the effect of the provision on advisers who, for example, provide general advice on listed products.

3. Wholesale investors

In addition to the above point about secondary sales, the wording of section 993DB(1) and the references to disclosure and disclosure documents that are required to be given to *retail* investors, it should be made clearer that the regime does not apply financial products offered to, or dealings in financial products by, *non-retail/wholesale* investors.

Given that the stated purpose of the regime is to address shortcomings in the existing disclosure regime where that existing disclosure regime applies in relation to offers to retail investors, the DDO regime is not intended to apply to wholesale investors. However, we suggest that this is put beyond doubt perhaps through a statement in the EM.

4. Target market determinations for financial products

If a company's constitution "*provides that ordinary shares may be converted into preference shares*", then those ordinary shares are captured under the TMD provisions contained in section 993DB of the Bill (see section 993DB(3)(a)).

However, the meaning of "*provides*" in the context of section 993DB(3)(a) of the Bill is unclear and it is submitted will have an unintended effect of catching almost all companies.

The EM to the Bill suggests that the broadest possible interpretation should be adopted to ensure that the "*operation of the new regime cannot be avoided by a company that may seek, in effect, to disguise an issue of preference shares as an issue of ordinary shares*" (see paragraph 1.25). In light of the statements in the EM, a broad interpretation of "provides" could include all constitutions which provide general articles reflecting the company's power to convert or vary the rights or any class of share, or any constitution which defines the rights attached to preference shares in accordance with section 254G of the Corporations Act, thereby providing for future conversion.

These provisions are common to ensure that companies retain maximum flexibility to issue preference shares**.** A review of the constitutions of all entities in the ASX Top 30 shows that all but one contain preference share provisions with the majority also containing express powers to covert or vary rights attaching to shares.

Typically, anti-avoidance provisions require some element of intent to enliven the operation of the prohibition (for example - the secondary sales provisions in section 707 of the Corporations Act). If that is the primary purpose of the proposed arrangements in section 993DB(3)(a) then it is submitted that another approach should be adopted.

5. Target market determination for a class of persons

Section 993DB(9) requires a TMD to describe the *class of persons* who comprise the target market for a product. It would be helpful if there could be more precision about how broadly or narrowly a class of persons should be defined, or what characteristics

could comprise the description of a class of persons – for example, demographics, employment status or even the holding of particular objectives or needs.

The EM appears to suggest that the description for the class can be broad. However, the Bill and the way in which it describes the obligations and issuers and distributors to ensure a product is only distributed in accordance with the TMD and to maintain records of products distributed to clients within the TMD (and outside the TMD) suggests that, practically, the description of the class needs to very specific and not leave uncertainty about whether a client is in or outside of a TMD.

6. TMD to be appropriate

Section 993DB(10) states that a TMD is appropriate if "*it would be reasonable to conclude that, if the product were issued or sold to persons in the target market in accordance with the distribution conditions, the product would generally meet the likely objectives, financial situations and needs of the persons in the target market*."

As noted in the EM, this language "does not reflect a requirement to take into account the personal circumstances of any particular person or to provide personal advice..". However there are some areas where further clarity would be appreciated.

Firstly, in making a target market determination, it is conceivable that persons in a target market may have some objectives, financial situations and needs that differ from person to person (and one person may even have some objectives that may conflict with their other objectives). The wording in section 993DB(10) implies that the product should meet <u>all</u> of the objectives, financial situations and needs of <u>all</u> potential persons in the target market – which would be impossible in most cases. For example, a product may meet one objective a customer may have of long-term wealth building, but not another objective that same person may have – for example, short term liquidity for emergencies. We suggest that the provision should be amended to make this workable – so for example, the product should meet "***one or more*** objectives, financial situations ***or*** needs of ***one or more persons*** in the target market".

Secondly, the issuer's and distributor's obligations in sections 993DE(1) and (2) require them to take reasonable steps to ensure that dealings and advice are consistent with the product's TMD. Where the TMD includes a person's objectives, financial situation or needs, an issuer or a distributor of a financial product would need to collect information about each customer obtaining the product that could mean any advice it gives falls into the definition of personal advice (ie. where the distributor has considered one or more of the person's objectives, financial situation and needs). For example, for a pension account – if the target market determination includes persons who are retired and have an objective of ensuring retirement income security -in distributing such a product, an issuer or a distributor would need to ask the customer whether they are (a) retired and (b) whether they have the objective of ensuring retirement income security, in order to monitor whether there are significant dealings that are not consistent with the TMD. There is a risk to distributors asking such questions that they are then deemed to be providing personal advice (ie. where the provider of the advice has considered one or

more of the person's objectives, financial situation and needs as per section 766B of the Corporations Act).

Treasury has indicated that the policy intent is certainly not to make such inquiries equate to the provision of personal advice. Clarity in the legislation to this effect is requested.

7. Disclosure of a TMD

The Bill and the EM are silent as to whether a TMD needs to be included in a disclosure document given to a retail investor. We understand from discussions that took place during the consultation sessions hosted by Treasury that the intended purpose of a TMD is for an issuer to communicate to a distributor how the product should be sold, and that the TMD is not directed to consumers. Treasury also indicated that there is no obligation to include the TMD in a disclosure document.

AFMA supports this flexible approach to disclosure of a TMD. There may be circumstances where a TMD or the essential elements of a TMD should be included in a disclosure document but this is appropriately a matter for an issuer to determine in each case.

The Corporations Act and Corporations Regulations prescribe content requirements for disclosure documents, including the requirement under section 1013E that a product disclosure statement (PDS) includes all the material that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product. It would be helpful if a Regulation (or failing that, ASIC regulatory guidance) could clarify that a TMD is not information that would be required to be included in a PDS under this test.

If neither the Regulations nor ASIC regulatory guidance address this matter, it is possible that a due diligence practice of including a TMD in a disclosure document will emerge regardless. This would most likely mean that more disclosure documents would need to be produced than would otherwise be the case if the TMD were not included in the disclosure document. This would ultimately create a cost that could otherwise be avoided.

While some PDS issuers may volunteer to include a TMD in their PDS and keep the PDS up to date, to assist them in complying with the DDO, clarification will assist responsible persons who prefer to communicate the TMD in another way or who consider another communication tool to be more effective and value a flexible approach to the DDO implementation.

8. Form and content of a TMD

While it is understood that the legislation will not mandate the form and content of a TMD, ASIC regulatory guidance will play an essential role in this space to help ensure that industry broadly adapts to the new regime as quickly as possible and that the regime achieves its intended outcomes. Ideally, the potential for (a) mis-selling of

products and (b) disputes between issuers and distributors about the content of a TMD will be minimised where there are widely understood and accepted practices in relation to the form and content of a TMD. Guidance will also assist in keeping the compliance costs associated with preparation and maintenance of TMDs to a reasonable level.

9. Investors outside the target market

The Bill does not contain any restriction on a person who is outside the target market for a financial product acquiring that product if they choose to do so. Nor does the Bill prohibit an issuer from issuing a product to a person outside the target market, or a distributor from distributing a product to such a person.

As per our previous submissions, a client that is outside the defined target market should be able to access the product as long as they are otherwise eligible.

Informed consumers should not be deprived of choice – it is part of their freedom to contract. Consumers should be able to access a product if they have received comprehensive disclosure and advice where relevant. Consumers should also be able to access the product via the execution only route, and it may be the case for example that target market information will need to be provided to the consumer.

Consumers are ultimately responsible for their own financial decision-making. Provided that disclosure material does not specifically preclude the customer the from target market, then the obligations should not preclude non-target market customers from transacting in or taking up the ability to transact.

Either the legislation or the EM should make it clear that a person is not prevented from acquiring a product just because they are outside the target market. This is also an area where ASIC guidance can perform a valuable role.

10. Review of TMD

It would be helpful if ASIC regulatory guidance could address in more detail when an issuer "reasonably ought to know" that an event or circumstance has occurred that would reasonably suggest that the TMD is no longer appropriate or a review trigger has occurred, as per section 993DC(3).

11. Change of TMD

It would be helpful if it could be confirmed in the legislation that there are no obligations towards customers who acquired a product and were within the TMD at the time they acquired the product, but due to a revised TMD those customers then fall outside the revised target market.

The legislation should also address the impact on "dealing" in a financial product if an investor is seeking to sell a product and the investor no longer fits in the TMD, either because the TMD has been revised or because the investor's financial position has changed and they have moved outside a TMD. Although presumably not intended, the

current definition of “dealing” could prevent an issuer or distributor from knowingly allowing the client to sell (“deal”) an existing investment.

12. Reasonable steps to ensure TMD given effect to

Section 993DE(1) requires that a person who makes a TMD for a financial product (ie. the issuer) must take reasonable steps to *ensure* that dealings in and financial product advice provided in relation to the product are consistent with the most recent determination.

Failure to comply with this requirement is an offence and a civil penalty provision.

Assuming that an issuer complies to the fullest extent with the DDO regime and their other general disclosure obligations, it is very difficult in practice for an issuer to ensure in every case that dealings in or advice given by another party are consistent with the TMD.

In all foreseeable circumstances, a distributor who deals with a retail consumer will be a licensed regulated entity, and the onus to comply with the law should be placed on that entity, rather than requiring the issuer to ensure that dealings in the product and advice are consistent with the TMD.

Accordingly, it is recommended that s993DE(1) is amended so that the obligation in that subsection is restricted to the person who made the TMD. Subsection (2) imposes the same obligation on other persons.

We are also concerned the application of distribution obligations to listed products will be problematic for both the issuer and the distributor. Although an issuer of an exchange traded product can make and publicise a TMD, an issuer will often have no contractual relationship with the distributor of such products and therefore no basis on which to exercise any control over those distributors. It is therefore unclear what if any ‘reasonable steps’ are required to be taken under section 993DE(1).

If it is the case that the requirements under section 993DE are intended to be scalable it might be that minimal action is required by an issuer in relation to the distribution of exchange traded products in order to satisfy the reasonable steps test. However, this creates unnecessary uncertainty and it would be preferable that either the legislation or the EM makes it clear that the obligations in section 993DE(1) do not apply to listed products.

This issue is reinforced by the impracticality of proposed section 993DE(2) for distributors, particularly trading participants. This section requires such participants to take positive measures to ensure a product is suitable before they allow a client to buy or sell a product. Such participants may provide execution only services, including direct market access and straight through processing for clients, as well as broking in a dynamic environment involving multiple transactions across multiple platforms in fractions of seconds. Time is often of the essence. In such an environment, it is difficult to see how a broker can be reasonably expected to take positive steps on each trade to

assess and reconcile a client's current status, the underlying security being traded and the particular wording of the relevant issuer's latest TMD without causing significant and - possibly damaging - disruption. Again, this issue would be resolved by removing listed products from the regime.

13. *Distribution information*

Section 993DF(2)(b) requires a regulated person who deals in or provides financial advice in relation to a financial product for which a TMD has been made to keep records of the information set out in subparagraphs (c) through (g).

However, there does not appear to be any requirement for a distributor to give that information to an issuer, either for purposes of reviewing a TMD or any other purpose.

It is suggested that section 993DF(2) should be amended to include an obligation on a regulated person to give distribution information to a person who makes a TMD on request and within a reasonable time.

14. *Notifications to persons who make TMDs*

Section 993DF(5) requires a regulated person who becomes aware of a significant dealing in a financial product that is not consistent with a TMD to notify the person who made the TMD about the significant dealing as soon as practicable, and in any event within 10 business days of becoming aware.

In turn, section 993DG requires a person who makes a TMD and who becomes aware of a significant dealing that is not consistent with the TMD, to notify ASIC in writing as soon practicable and in any event within 10 business days of becoming aware.

To the extent that a dealing in a financial product that is not consistent with a TMD arises through or during a regulated person's interaction with a consumer, the notification process can be reduced by half by obliging the regulated person to notify both the person who made the TMD and ASIC at the same time. There is no obvious rationale why a distributor should notify an issuer, who then has to notify ASIC – particularly if this then means it takes 20 business days for ASIC to be notified of the matter, rather than 10 business days.

This would also be more consistent with the obligation on a regulated person in proposed section 993DD(3).

Product intervention power

15. *Significant detriment to retail clients*

The meaning of "*significant detriment"* is not defined in the legislation, and intentionally so according to the EM – see paragraph 2.28. The EM further states that the detriment would need to be sufficiently great to justify an intervention, having regard to the circumstances of the case and the object of the intervention power. Paragraph 2.29 of the EM lists non-exclusive factors that must be considered by ASIC in determining whether a detriment is significant. ASIC can consider any other relevant factor.

In the initial stages of these reforms there is a high degree of uncertainty within industry about the meaning of significant detriment. Discussions with Treasury and ASIC to date have been helpful in clarifying a range of issues including that:

(a) It is not intended that the intervention power would be triggered in relation to potential or actual significant detriment to relevant persons where that detriment might or does arise in connection with macro, whole of market or global/political events;
(b) Consumers of financial products face risks and can lose money for a range of reasons, and the intervention power is not designed to prevent this;
(c) ASIC intends to use the power very rarely;
(d) The power is unlikely to be used to stop the issue of a category of products merely because they are complex and/or high risk;
(e) The power is more likely to be used in relation to recurring or repeated problems and market failures; and
(f) The power is unlikely to be, or it will be rare that the power is invoked against a single issuer. In practice, ASIC will use other powers and work with an issuer to resolve concerns before the intervention power becomes an option.

In order for the reforms to be fully effective and achieve intended outcomes by discouraging undesirable behaviour before it occurs, it would be preferable for the statutory regime to be more precise about the meaning of significant detriment. However, if the Government is not minded to take this approach, it will be important for ASIC guidance to articulate in detail its interpretation of the intervention power, the circumstances in which it could be enlivened, and how the process will operate from the time of identifying potential or actual significant detriment through to the completion of the prescribed period for an intervention order. The use of examples (whether based on actual events or not) and scenarios to demonstrate circumstances where ASIC might be likely to invoke the power will be extremely helpful.

There is also at present a degree of uncertainty about how the consultation process prescribed in section 1022CE will operate. Section 1022CE(2) says that ASIC is taken to comply with the obligation to consult with persons who are reasonably likely to be affected by the proposed order if ASIC publishes a proposed order or a description of the content of the proposed order on its website and invites the public to comment on the proposed order. With due respect, an obligation to publish the order on the website and invite comment is manifestly inadequate as a consultation process with affected

parties (particularly where some or all of those parties are able to be identified), and may not satisfy procedural fairness and natural justice. We do not imagine that in practice ASIC will limit its consultation process to the measures in section 1022CE(2).

Accordingly, it will be very helpful to industry and to consumers if ASIC articulates in detail in the regulatory guidance how it envisages the consultation process will operate. In circumstances, albeit rare, where an intervention order might apply to a single issuer or a small group of issuers we anticipate that the very initial stages of this process will be conducted in private in order to allow a final opportunity for concerns to be resolved (assuming that ASIC has already exercised the other powers available to it).

16. *Use of the power should be linked to the issue that enlivened it*

We understand that ASIC intends to exercise these powers with the goal of solving the problem in question and with the least intervention possible. We agree this is appropriate and suggest that consideration is given to enshrining this approach in the legislation or at the very least in the EM. This could be framed as requiring that the intervention order should only go as far as is required to address the 'significant detriment' to retail clients that has been identified by ASIC.

17. *Duration of an intervention order*

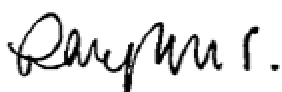
We note that the proposed duration of an intervention order has increased from 12 months (as per the December 2016 Proposals Paper) to 18 months in the draft legislation. We suggest this should be reconsidered, as the new design and distribution obligations should result in less intervention being required. By way of comparison, temporary product intervention orders have a life of 12 months in the UK and 3 months in Europe under MiFIR.

18. *Application to the Court*

Section 1022CF contemplates an application to the Court for an order staying or otherwise affecting the operation or enforcement of a product intervention power. It would be helpful if the legislation clarifies who has standing to make such an application to the Court ie. can a third party apply? Any proposed intervention by ASIC should be stayed while the Court is considering such an application.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries about this submission.

Yours sincerely



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