

# Insurance law update

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## LONDON MARKET

# Australia's new regulatory benchmark: ASIC's 2014-15 STRATEGIC OUTLOOK

Promoting investor and financial consumer confidence will stimulate changes to the regulatory environment in Australia. With a renewed focus on financial product design, distribution and disclosure, Australia's financial services and market regulator will adopt a 'detect, understand and respond' approach to non-compliance

With this view, the Australian Securities and Investments Commission (ASIC), the Australian law enforcement agency responsible for regulating corporations, markets, and financial services, published its *Strategic Outlook* for the 2014-15 financial year on 20 October 2014.

The Outlook relevantly:

- identifies key projected challenges in the current financial year to ASIC's long standing priorities of promoting investor and financial consumer trust and confidence and ensuring fair, orderly and transparent markets; and
- outlines the strategies it intends to adopt in order to counter each challenge.

Included amongst ASIC's intended actions are greater regulation of financial planners and advisers, as well as increased surveillance and scrutiny of novel add-on insurance products. As discussed below, these strategic measures are likely to affect the activities of financial service providers and their insurers, and moderate risk in the financial services market.

### FINANCIAL ADVICE AND CONDUCT UNDER THE SPOTLIGHT

The Outlook highlights financial advice as an area of concern. Financial services licensees are responsible for ensuring that advice is of a high quality. ASIC considers that the compliance culture – or lack thereof – of some financial services businesses inhibits their ability to do so. Competence of licensees, poor compliance systems and unlawful benefits also diminish the quality of financial advice. Growing assets held in superannuation are expected to intensify this risk as investors and consumers are presented with a greater range of products to choose from.

In light of the above, ASIC considers the welfare of customers and investors should be the heart of a financial services business. Introducing policies and procedures consistent with this approach will not only foster legal compliance, but also encourage consumer trust and confidence, maintain the quality of financial advice and limit investor loss.

## 'HIGH RISK' COMPLIANCE FOCUS

ASIC intends to respond to this issue by addressing all complaints it receives, with the intention of resolving problems quickly and effectively. Enforceable undertakings and infringement notices will be issued where appropriate.

Interestingly, the Outlook drew a target on the backs of Australia's six largest financial advice firms, stating that it will focus specifically on whether they are compliant with areas identified by ASIC as 'high risk'. These high-risk activities include advice and managed investment schemes.

## INNOVATION DRIVEN COMPLEXITY

Retail products, in particular, have been identified as a casualty of innovation. Poor product design, inadequate disclosure and undesirable marketing are all cited by ASIC as responsible for increasing the probability that investors will make poor investment decisions without understanding the nature of a product and the associated risks.

The Outlook concedes that although full and accurate disclosure is important, it is limited by the typical consumer's limited financial literacy and confidence, as well as behavioural biases.

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## 'ADD ON' INSURANCE PRODUCT SURVEILLANCE

In order to address this challenge, ASIC will continue to conduct surveillance on inappropriate products being sold to investors and consumers. Special attention will be directed towards 'add on' insurance, such as consumer credit insurance and payment protection insurance, as ASIC considers that such products are often sold to vulnerable consumers with limited financial savvy.

Enforcement measures will be taken where appropriate. ASIC will provide issuers with guidance in regard to disclosure, ensuring disclosure is meaningful, adequate, and of a high quality. Retailers engaging in misleading marketing will also be reprimanded. Of note is ASIC's commitment to education, particularly its intention to lead and coordinate the National Financial Literacy Strategy in 2014-17, an ASIC initiative aimed at long-term improvement of all Australians' financial literacy and choices.

## MARKET IMPACT

Ensuring that financial advice is sound and retail products are sold responsibly is at the forefront of the Strategic Outlook. Although many of ASIC's proposed actions will place the burden of compliance firmly on financial service providers, greater regulation of maverick financial services licensees may well restore trust and confidence in the industry.

Similarly, as the Australian market slowly increases its appetite for financial products, increased consumer education may also assist in reducing the impact of potential risks associated with ill-conceived products.

However, given the limited framework within which ASIC operates, a fact acknowledged by ASIC in the Strategic Outlook, it remains to be seen how successful its implementation of the Outlook will be, in particular in the context of its attempt at promoting investor and financial consumer trust and ensuring orderly and transparent markets.

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