

The Insurance in Superannuation Working Group

EK Global Consulting, a governance, risk and compliance consulting firm, welcomes the opportunity to review and provide feedback on the Consultation Paper: Insurance in Superannuation Code of Practice.

If you have any queries or comments please do not hesitate to contact me at erik@ekglobalconsulting.com or 0400 184 455.

Yours sincerely,

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Consultation Paper: Insurance in Superannuation Code of Practice

EK Global Consulting submission to the Insurance in Superannuation Working Group

20 October 2017

BACKGROUND

A code in the financial services sector can be an effective tool to assist and guide industry participants in their roles and responsibilities. The code should also provide clearly communicated expectations of the actions of these industry participants to the consumers. This is powerful in creating trust and confidence in those industry participants.

ASIC has provided guidance in relation to codes for the financial services sector including their approach to approving a code. While there is no obligation for a code to be approved by ASIC it would seem sensible that any code created for the financial services sector take account of the guidance.

EK Global Consulting's practical experience in working with RG 183, and the implementation of an ASIC approved code, guides its views in relation to ASIC's expectations for a code and a code's approval.

EK Global Consulting is a strong believer that one of the key elements of the successful implementation of a code is the governance framework and through this the monitoring, supervisory and oversight processes related to the code.

There are a number of key elements to this and it is relevant to couch these in terms of the 3 Lines of Defence Risk Governance Model given the regulatory support for this standard.

Under this model there are 4 key players. They are the Board, Line 1, Line 2 and Line 3.

In the context of the Code we would view the Code Owners (as we understand it AIST, ASFA & FSC), operating as a Board providing the strategic direction and approval of the Code. Inherent in this is an obligation to define the expectations for the activities of both the subscribers (primarily through the Code itself) and the risk management and assurance functions.

Under this model there is requirement for a Line 1 – representing in some form the management of the business of operating the Code (on behalf of the Code Owners) - to perform the ongoing monitoring and supervision. This ongoing monitoring and supervision should be focused on the activities of the subscribers to the Code including the initial subscription process and the ongoing reviews to ensure adherence to the Code. An important element of this role is that the Code Owners will, in effect using their own risk appetite, define what it expects this Line 1 to do. Without this Line 1 in existence there is nothing for the Code Administrator to perform oversight over and its independence will be compromised. It does not appear that this Line 1 is currently envisaged.

The Code Administrator would operate as the functionally independent Line 2 which should provide assurance feedback to the Code Owners on the activities of the Line 1. This must include oversight of the monitoring and supervisory activities surrounding the Code. This in turn clearly defines the scope of the Code Administrator and helps ensure it is adequately resourced. This combats a common criticism around Line 2 functions that they are either over or under resourced. It is critical that the Code Administrator is not involved in the day to day supervision or decision making of managing the Code (for example the approval of a subscription) as this will compromise their independence and their ability to report on the Code's effectiveness to the Code Owners.

The formal independent review every 3 years would operate as the Line 3 providing completely Independent Assurance.

We believe that this governance model is crucial to the success of the Insurance in Superannuation Code of Practice. We also believe that the governance model described above is consistent with RG 183 and ASIC's regulatory expectations for a code and a code's approval.

FEEDBACK QUESTIONS

B1 SCOPE OF THE CODE

1. How should the ISWG ensure that all trustees are bound by the Code?

We strongly believe that there are two crucial elements to ensure that the Trustees are bound by the Code.

The first is a robust subscription process where the Code Owners clearly outline what is expected of the Trustees including on an ongoing basis. This should go beyond presumption of subscription via membership of one of the Code Owners.

The second is ongoing risk based monitoring and supervision of the obligations by the Code Owners in the form of a robust and resourced Line 1.

Without a subscription process, there is a strong likelihood of a mismatch of expectation and action from the Trustees that could result in significant Code breaches and disciplinary action. The subscription process must include an agreement by the Trustees that they will be bound by the Code as well as relevant process steps to ensure that they are aware of and understand their obligations. As part of this subscription process the Trustees should be provided with clear and practical guidance documents from the Code Owners to support their understanding of their obligations. Standardised training for the Trustees delivered by the Code Owners would improve the likelihood that there is clear communication of expectations. This will give all subscribers to the Code the best chance of successfully adhering to the Code.

An outcome where a significant proportion of the Trustees do not understand or meet the obligations of the Code will seriously undermine the effectiveness of the Code. It is also an inefficient use of monitoring and supervisory resources and would risk any actual or potential ASIC code approval.

The Code Owners should define the ongoing risk based monitoring and supervisory obligations. This will make it clear to the Trustees, the Line 1 and the Code Administrator the scope of these activities. It is also crucial that the Code Owners control this process to ensure that the goals and objectives that they have for the Code are aligned with their risk appetite and that adequate resources are made available to monitor and supervise. The ongoing risk based monitoring and supervision is key to identify actions and issues in a timely fashion and efficient manner. The Line 1 can then work with the Trustees to address issues, ideally before discipline is required. This will increase the likelihood that Trustees remain bound by the Code and assure the success of the Code in the eyes of the consumer and regulators.

B9 STAFF AND INDEPENDENT SERVICE PROVIDERS

27. Do the standards for training and monitoring staff require further detail?

We do not believe that more detail is required in this section. We believe that the Code Owner should have oversight over the training created and delivered to ensure consistency. This would form part of the ongoing monitoring and supervisory program.

We view it as important that the Trustees are themselves subject to regular training and guidance to ensure that they understand their obligations as the subscribers to the Code. This should be delivered by the Code Owner.

28. What are the practical implications of requiring trustees to ensure Independent Service Providers comply with the Code?

We believe that the Code Owner should set expectations for activities the Trustees will be required to perform as part of confirming that the Independent Service Providers comply with the Code. Ideally this would form part of the subscription process.

B.11 GOVERNANCE, ENFORCEMENT AND SANCTIONS

30. Is the governance framework appropriate, taking into account ASIC's requirements for approval of the Code, and the governance provided by existing financial services codes?

We do not believe that the governance framework is appropriate taking into account RG 183 and ASIC's requirements.

As discussed in the Background section we believe that any governance framework must utilise the 3 lines of defence risk framework. We again state that we believe what is outlined in the Background section will meet RG 183 and ASIC's requirements with regards the governance framework of the Code.

We do not believe that this needs to be explicitly outlined in the Code. There are many advantages to not doing this including the flexibility to evolve the governance activities without need to release a new version of the Code. We believe that the governance section and references to the roles and responsibilities of the Code Administrator are better placed in a fuller governance document (including risk management frameworks) than in the Code itself. We believe that many of the elements outlined in the Background section would form the basis of this governance document.

We believe that the Code should focus specifically on the obligations of the Trustees. Clearer and simpler guidance to the Trustees will improve their successful understanding of their obligations under the Code. This will in turn lead to improved adherence to the Code and a greater likelihood of the Code being successful in the eyes of the Code Owners, consumers and regulators.