



Stockbrokers
Association of Australia®

10 November, 2016

Ms Nancy Milne
Chair
Securities Exchanges Guarantee Corporation
Level 6, 20 Bridge Street
SYDNEY NSW 2000

By email: segc@asx.com.au

Dear Ms Milne,

National Guarantee Fund (NGF) - Proposals for Reform Comments by the Stockbrokers Association of Australia

We refer to the Consultation Paper from the Securities Exchanges Guarantee Corporation (SEGC) setting out proposals for reform of the NGF (“the Consultation Paper”). The SAA appreciates the opportunity to provide comments on the proposals for reform.

As a preliminary matter, the SAA appreciates the considerable efforts that have been made by the SEGC to administer the NGF prudently. SAA also appreciates the SEGC’s approach in looking forward so that the Fund remains well placed to meet its objectives.

Our comments on the Proposals for Reform are set out below.

Preliminary Comments

The SAA understands that markets today have changed in significant ways from the landscape that existed when the provisions establishing the NGF were originally drafted. There are some good arguments supporting a review of the NGF and the question of compensation for investors generally.

The NGF was set up with specific objectives and was funded with those objectives in mind. SAA members stand by the NGF and the protection of their clients. This includes standing by ultimate liability of market participants to pay any call that is appropriately made to cover any shortfall in the NGF that may arise.

The SAA is supportive of a review of the NGF, and the framing of the heads of claim, to ensure that they are in line with the markets as they currently operate. However, in doing so, the rider is that any review should not open up additional exposure to liability of market participants beyond what is currently built into the NGF model. The NGF is not an unlimited fund, and it was never intended as a general compensation fund for all purposes. The NGF model should not be stretched into providing for new categories of liability without a corresponding review of additional sources of funding the NGF to meet any increased claims.

Changes to Heads of claim

As mentioned above, there is acknowledgment that the specific heads of claim are drafted in some cases in terms that may appear antiquated. For example, the head of claim in respect of contravention of ASTC certificate cancellation requirements no longer reflects commercial reality. SAA is supportive of a review of the heads of claim with a view to making them simpler and less costly for the SEGC to administer.

The key qualification is that careful thought needs to be given to any new form of simplified wording such that it does not open up grounds for new forms of claim to be brought that would not currently be open under the existing heads of claim. As mentioned, any widening of the ability to bring claims against the fund would be unfair unless it was accompanied by a review of the sources of funding of the NGF to meet any additional potential for liability.

The proposal that liability be expressed to be in respect of “losses incurred by a client as a consequences of the insolvency of the broker” is a general form of wording that has led to some concerns being expressed that broker liability may become wider than under the current regulations.

We note that the SEGC states in the Consultation Paper that losses “...must be connected to the broker’s actions as a participant of a member exchange.” SAA endorses this, and the SEGC comment that the NGF “.....should not expand to cover futures, derivatives, foreign exchange or securities traded on a foreign exchanges.” Any new wording must be sufficiently clear on its face that liability of the NGF will not be wider than at present.

SEGC's ability to make changes in the future

The SAA is not opposed to greater flexibility in the administration of the NGF, in order to manage the costs of the NGF.

Notwithstanding the commitment to consultation which is expressed in the Consultation Paper, and the proposal requiring Ministerial approval, the SAA does not favour the Board of SEGC being granted the power to itself vary heads of claim in future.

The heads of claim are a sensitive matter, given that they affect the rights of investors, of market participants and any other entities who may be liable to meet liabilities of the NGF. The SAA considers that the Minister is the appropriate person to balance these competing interests, given also ultimate Ministerial accountability to Parliament.

Cap on Claims

The SAA agrees that a cap on claims would be a prudent measure to ensure that the NGF remains adequately funded and provides the widest protection for investors. The SAA recommends that claims be capped at \$500K per claimant/\$250K per claim. We note that this proposed figure is in line with the level of investor protection under the banking deposit guarantee scheme.

If the Government were to agree that a cap on claims was appropriate as a matter of policy, then the SAA is strongly of the view that as a consequence of introducing a cap, there should not be any reduction in the assets in the Fund by reason of there being a reassessment of the minimum amount needed in the Fund to meet the newly assessed level and likelihood of claims. The SAA would argue that amounts in the Fund should remain in the Fund for future needs. There should not be any redeployment of funds that might be considered surplus, in view of the imposition of a cap, to other purposes.

Additional matters warranting consideration

The SAA would like to propose a further question for reform not raised in the Consultation Paper.

At present, market participants bear considerable potential financial liability under the NGF regime, however they have no representation as regards governance of the NGF. This is a considerable anomaly that should be addressed. The current provisions were no doubt drafted as a consequence of there being a single exchange which was owned by member firms. Hence, it may have been thought that market participants were adequately represented in governance terms, but this is clearly no longer the case.

The SAA would like to see the question of governance reviewed to ensure adequate representation of market participants on the Board of SEGC.

We appreciate the opportunity to provide comments in respect of this Consultation Paper. Should you require any additional information or wish to discuss further any of the matters raised in this Submission, please contact me or Peter Stepek, Policy Executive on pstepek@stockbrokers.org.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Green', with a stylized flourish at the end.

Andrew Green
Chief Executive