



2 May 2019

Manager
Banking and Capital Markets Unit
Financial System Division
Markets Group
Treasury
Langton Crescent
PARKES ACT 2600

By email: NGFreform@treasury.gov.au

Dear Sir/Madam

**CAPPING CLAIMS ON THE NATIONAL GUARANTEE FUND
STOCKBROKERS AND FINANCIAL ADVISERS ASSOCIATION (“SAFAA”)
SUBMISSION**

We refer to the Draft Regulation and Draft Explanatory Statement proposing changes to the National Guarantee Fund (“NGF”) to, among other things, place caps on claims on the NGF.

SAFAA is pleased to make the following Submission on the Draft Regulation and Explanatory Memorandum.

Proposed limit of \$1 million on claims on the NGF

SAFAA notes the proposal to introduce a cap of \$1 million for claims by the same claimant that relate to the same Participant and the same event.

SAFAA makes the following comments on the proposal:

- There is a finite amount standing in the NGF, and SAFAA acknowledges the prudent efforts being made by the Securities Exchanges Guarantee Fund (“SEGC”) to manage the assets of the Fund in accordance with its statutory function. The proposed cap would undoubtedly assist in preserving the Fund for the benefit of all future claimants. We note that in other areas of compensation, such as workers compensation claims, caps on claims have been introduced to ensure the ongoing financial viability of those schemes.
- The size of the proposed cap, namely \$1 million, should ensure that most claims, in particular retail investor claims, should not be adversely affected.
- Claims on the NGF are comparatively rare. The incidence of default by Market Participants is very low, numbering only an isolated handful over the last few decades. This is the result of the very strict regulatory regime applying to Market Participants under the Corporations Act and under the Market Integrity Rules.

SAFAA is of the view that if there is appropriate Regulatory oversight of Market Participants, then default by a Participant giving rise to claims against the NGF ought only to occur in the most exceptional of cases.

The above factors would form a reasonable basis for a decision that the proposed cap on claims is a reasonable policy approach.

Proposed limit of \$250,000 on claims in respect of cash

SAFAA notes the proposal that, within the context of the proposed cap on claims, there be a sub-cap of \$250,000 in respect of cash held with a Participant.

We note that the sub-cap is proposed for the same policy objectives in mind as the overall cap and having regard to the equivalent \$ cap that is applied under the Banking Guarantee framework.

As with the previous proposal, the proposed cap raises the same issues of balancing the interests of certain claimants against the policy objectives of ensuring the ongoing viability of the NGF.

Placing claims in respect of cash under the NGF on the same footing as cash claims under the Banking Guarantee has an underlying rationale in terms of policy neutrality between compensatory frameworks, which would justify the imposition of the proposed \$250,000 cap.

Proposal to extend 15% participant cap to cover all heads of claim

SAFAA notes the proposal to remove the existing per-Participant cap that applies to claims arising out of the insolvency of a Participant (namely 15% of the prescribed minimum amount of the NGF at the relevant date) and replace it with a 15% cap applying to all heads of claim.

It was never entirely clear why the percentage cap was applied in respect of one head of claim only, when the provisions of the NGF were first enacted. It would seem logical to us that the same provision should apply to all heads of claim.

If there are any issues arising from any of the above documents, could you please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andrew Green". The signature is stylized with a large initial 'A' and a long horizontal stroke at the end.

Andrew Green
Chief Executive