

31st March 2017

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London, E14 5HS

Dear Sirs

MGAA response to FCA Review of the FSCS funding

We are grateful to you for inviting us to comment on the FCA's review of FSCS funding as identified within your consultation document CP16/42.

Our answers to your questions for discussion and consultation, as detailed below, are compiled from Managing General Agents operating in the general insurance arena, writing both consumer and commercial risks. We have only answered the questions which we consider to be most relevant to our sector.

The Managing General Agents' Association (MGAA) is a trade body representing Managing General Agents operating in the United Kingdom. Its primary function is to promote and enhance the business environment for its members. MGAA members are writing in excess of £3.6bn in premium emanating from UK domicile risks. However many MGAA members are also writing overseas risks in Europe and in the USA, which would increase this sum to in excess of £4bn. For further information about the MGAA and its membership please visit our website www.mgaa.co.uk.

1 - Ideas and options for discussion

Q1 (p27): Do you agree with the introduction of risk-based levies? Should we also consider other regulatory responses?

- *We agree in principle to the introduction of risk-based levies but would have concerns about the introduction of a funding model which would make the calculation of tariff data more complex and difficult to understand.*

Q2 (p27): Do you believe that risk-based levies could be appropriate in relation to: a) higher risk investment products; b) insurance brokers that choose to place business with unrated insurers; and c) any other types of specific products or services?

- *This answer applies to item b) only*
- *We disagree with a blanket approach - not all unrated insurers are weak and in certain situations there can be a strong case for our members to use them.*

- *Risk is, after all, based around various factors, so a low-rated insurer could be at greater risk of insolvency than an unrated insurer.*
- *Post Brexit, the PRA is unlikely to be obliged to allow ‘weak’ passported-in insurers to trade in the UK, therefore they could have a greater influence on non-UK domicile insurers than they do currently.*

Q3 (p28): Do you agree in principle that product providers should contribute towards FSCS funding relating to claims caused by intermediary defaults?

- *Yes, in principle, we agree.*
- *Where an insurer provides delegated authority to an intermediary, we are of the view that the insurer should be responsible for the FSCS levies associated with such delegation, as it is effectively an outsourcing arrangement.*

Q4 (p32): Do you have any views about the current effectiveness, or otherwise, of PII cover including in reducing the number and cost of claims on the FSCS, and about the role of PII in providing compensation to consumers who have claims against failed firms?

- *PII is generally designed and effective as a protection for professionals and, to the extent that it also compensates customers, it, by definition, also helps the FSCS.*
- *We do not feel there is a good case for PII becoming a ‘front stop’ for customer compensation and that its primary purpose should remain as a protection for the professional firm.*
- *A compensation fund is just that, a compensation fund. We are of the view that it should continue in this way. A PII policy cannot be turned into a compensation mechanism without distorting the product and the market, leading to very serious issues about the availability of cover, as well as the price and scope of that cover, particularly at times of systemic problems.*
- *The MGAA is also concerned that the current effectiveness of PII cover in the general insurance market may be compromised by the inadequate limits of indemnity purchased by many provincial insurance brokers.*

Q5 (p32): Do you have any views or suggestions about the possible features of more comprehensive, mandatory PII insurance? Do you have any suggestions about other possible tools, remedies or approaches, which could be used to reduce the scale of funding currently required by the FSCS?

- *Some countries have guarantee requirements (e.g. France where they require brokers to build a Garantie Financière.) A financial guarantee might be a more suitable front line alternative for the FSCS than extending PII protection.*
- *With regard to PII policy features, we have the following comments:*
 - *There is a suggestion that the “claims made” basis for PII is inappropriate; whilst changing that would be a massive shift in the UK PI market, it should be pointed out that in countries where PII has historically been written on a “losses occurring” basis, there are moves towards “claims made”, with sunset clauses becoming increasingly common.*

- *We not necessarily against the removal of exclusions for policyholder insolvency, or of the FSCS as a claimant, but that would increase the cost for riskier firms.*
- *Additional restrictions on excess levels could make some firms uninsurable.*
- *We do not feel that removing the need to tell the insurer about future possible liabilities is sustainable. The recent Insurance Act has made it more difficult for insurers to decline claims if a fair presentation of the risk has been made and many PII policies already provide brokers with relief from “innocent non-disclosure” or late notification.*
- *While our members would generally support additional requirements to have ‘run-off’ cover in place, it may not be available for the firms that need it most, or at a cost that is affordable.*

Q15 (p47): Do you agree with our intention to keep the current class thresholds for intermediary classes, merging the thresholds if appropriate to adopt a revised class structure?

- *We support the retention of existing classes (i.e. all intermediation in separate classes), with product provider contributions. We are strongly against GI, life and pensions, investments and home finance being merged into a single intermediation class, as this is not consistent with a risk-based approach to compensation funding.*

We would however be pleased to clarify or expand upon our comments as appropriate.

Yours sincerely

Peter J Staddon
Managing Director
Managing General Agents’ Association