

Client Alert

Update to ASIC's Regulatory Guide 126 (RG126)

The Australian Securities and Investment Commission (ASIC) released an updated version of Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG126) on Monday 26 October. RG126 sets out the minimum Professional Indemnity requirements for licensees with an exposure to retail clients.

This alert provides an update to clients about the changes to RG126.

Background

The various requirements of the 'Implementation policy period', or Stage 1, of RG126 should have been addressed by licensees over the course of 2008 by effecting various changes to their policies.

The RG126 legislation also prescribed some further Stage 2 requirements to be in place by 1 January 2010. These are briefly summarised below:

1. The licensee should have 'run-off cover for as long a period as is reasonably practicable, but at least for one year'.
2. The licensee should have cover for 'items not on their Approved Product List for representatives who act outside the Approved Product List in legitimate switching cases where a client is being switched from one fund or product to another'.

There has been considerable interest in these requirements in the lead-up to 1 January next year, as there has been speculation that insurers would be unwilling to provide these features of cover. There has also been speculation that ASIC would review or reduce the scope of these requirements.

Changes to the RG126 legislation

ASIC's update of 26 October now formally advises that licensees will not be required to have automatic run-off cover. This obviates the need for further changes to be made to licensees' Professional Indemnity policies in respect of this requirement.

ASIC has not thus far changed its requirement for licensees to be covered for 'switching' clients between funds, and licensees should be prepared for this requirement to remain in place.

Currently, Professional Indemnity policies for some licensees (financial planners in particular) restrict the scope of cover to advice provided in relation to products on the licensees' Approved Product Lists. In such cases, licensees will need to ensure that their policies are amended to explicitly provide cover for items outside their Approved Product List during 'switching' as required.

A further minor change to RG126 clarifies one of the Stage 1 requirements by confirming that fraud cover is not required for licensees who are sole traders.

AFS licensees with exposure to retail clients are encouraged to independently review the legislation and seek advice as necessary.

Clients should contact their Marsh advisor for specific information about their policy.

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