



CAYMAN ISLANDS MONETARY AUTHORITY

Summary of Responses from Industry Consultation The Rule and Statement of Guidance on Market Conduct for Insurance Companies, Agents and Brokers

General Industry Comments	CIMA's Response	Action
<p>CIMA should consider carving out intermediaries, brokers and agents who are regulated entities and already subject to Rules regarding Market Conduct as set out by their relevant Regulatory body. In some instances these companies are already subject to regulatory scrutiny to the highest order and subjecting them to additional indirect regulations by CIMA through Cayman Islands based carriers is duplicative and introduces potentially conflicting set of requirements. We view this as substantially similar to the Eligible Introduce legislation for anti-money laundering purposes, where the relying institution must take reasonable steps to ensure the counter-party is performing in an equivalent manner as if it was regulated in Cayman. This may be by contract, audit or similar measures of surveillance. If CIMA chooses to do so, they may set out such specific jurisdictions along the lines as equivalent jurisdictions laid out in the AML Guidance Notes.</p>	<p>Pursuant to Section 6(1)(b) of MAL, the Authority has a duty to regulate and supervise financial services business carried on in or from within the Islands. Further, Section 6(3)(a) of the MAL mandates the Authority to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre. It is therefore imperative that the Authority ensures that its licensees act in a manner conducive to good customer outcomes, market confidence and the reputation of the jurisdiction. By extension, the Authority must also ensure that its licensees understand their responsibility to ensure that the intermediaries, brokers and agents with whom they transact business are also exhibiting good conduct and market practices. The Authority cannot be passive in this regard nor pass on this responsibility to any other regulator.</p>	<p>None</p>

<p>Why is Cayman being compares to Ireland and stricter regulations being suggested, if the US and UK are not following the same standards?</p>	<p>The benchmark for the Authority’s rules, statement of guidance and principles have always been established international standards. Thus, the Authority’s priority in the development of Rule and SOG on Market Conduct is to ensure alignment with internationally established best practices outlined in the ICPs. The purpose of the jurisdictional comparison was to give the Authority a view of other jurisdiction’s framework with respect to market conduct as a point of reference.</p> <p>Further, the revised ICP 19 was released late 2017 after the preparation and release of the Authority’s jurisdictional comparison. The revised ICP 19 was released late 2017 after the preparation and release of the Authority’s jurisdictional comparison. Countries whose market conduct regimes have gaps will also bring their framework in line with revised ICP 19.</p>	<p>None Required</p>
<p>While fair treatment is an admirable sentiment it is far too vague to be included in regulatory guidance. There is no discernable manner by which licensees can comply or CIMA could determine compliance. We ask CIMA to consider deleting this section.</p> <p>As noted previously, fair treatment of customers is goal of the CIIA. However, what is “fair” can be and often is extremely subjective. Insurance is fundamentally s a set of contractual rights and obligations, in the context of statute, case and common law. Fairness, however that is defined, cannot supersede the legal</p>	<p>The term “fair” is commonly used language in law and regulation and exists in the Rule and SOG on Market Conduct in its current iteration. There is a body of case law that speaks directly to the duty to act fairly, in the making of decisions which affect rights, interests and legitimate</p>	<p>The Authority will add six (6) customer outcomes to Section 5.2.1 of the SOG.</p>

<p>framework under which the business of insurance operates. The rule and SOG appear to be attempting to ensure fair treatment of customers. Regulation can never mandate outcomes, particularly something so nebulous as fairness. There is no way to assess or meaningfully comply with such a requirement.</p> <p>Instead, the Association recommends that the focus be on the prohibition of certain practices (e.g. tied selling) or mandating certain practices (e.g. disclosure of all facts, terms and conditions). Whilst the Rule and SOG do contain some of these elements, some of the related requirements go far beyond.</p>	<p>expectations of customers. In cases where insurers or intermediaries are legitimately uncertain about what is considered "fair", the Authority is of the view that licensees can readily seek guidance from precedents previously set.</p> <p>ICP 19 explicitly encourages supervisors to "require insurers and intermediaries to establish and implement policies and procedures on the fair treatment of customers, as an integral part of their business culture".</p> <p>For further guidance, the Authority proposes that the SOG Section 5.2.1 be amended to include specific customer outcomes as outlined in ICP 19 for clarity purposes.</p>	
<p>We would ask CIMA to remove the section on conflict of interest or that it be substantially rewritten as it does not apply to insurance relationships.</p>	<p>The Authority agrees that this section requires some clarification.</p>	<p>The Authority will amend this section for clarity.</p>
<p>The topic of "advice" is quite prominent in both the Rule and SOG. Yet at no point is this term actually defined. Advice, as a recommended course of action, is rarely if ever given in an insurance context. Typically, customers describe needs and insurers/intermediaries describe what products meet those needs. However, this can vary considerably by product and some customers ask only for a price. A number of the requirements in the rule and SOG are completely inconsistent with this commercial reality.</p> <p>Further, this section mischaracterizes and oversimplifies the nature of the interaction between an insurer/intermediary and a customer. Typically advice provided is quite limited if any at all, which</p>	<p>The Authority agrees that a definition of advice is warranted and will provide a definition for the term in both the Rule and SOG as follows: "Advice includes the provision of product information and also relates specifically to the provision of a personalised recommendation on a product in relation to the disclosed needs of the customer". This definition was adapted from</p>	<p>Add a definition of advice to the Rule and SOG on Market Conduct.</p>

<p>customers may accept in whole or in part. A customer will not explicitly refuse “advice”. We ask CIMA to consider deleting this section.</p> <p>The Association suspects that the principal concern of CIMA with respect to Advice is with regard to investment type life insurance products (variable life, variable annuity, unit linked). If so, the Rule and SOG must be much more specific.</p>	<p>the definition of advice outlined in ICP 19.</p> <p>Further, advice in an insurance context includes both the provision of product information as well personalised recommendations on a product. Both activities are commonly employed during the sale or distribution of both life, investment-linked and property and casualty insurance products. Moreover, the rules and guidance in the measures, which are adaptations from ICP 19, do not mandate insurers and intermediaries to provide advice to their clients. The measures simply require that in times where advice is warranted licensees to ensure that advice given is clear, fair and not misleading and that where advice is refused, there is documentation of that fact.</p>	
<p>The wording of the Policy Servicing sections of both the Rule and SOG could be clearer and should more closely follow the related Insurance Core Principle.</p>	<p>Policy servicing is a widely used and varied term in insurance. Thus, the Authority aimed to outline a simple but comprehensive scope of the term in the both Rule and SOG. However, after review of the definition outlined in ICP 19, the Authority will amend its current definition of policy servicing to bring it in line with the ICP.</p>	<p>Amend the definition of Policy Servicing as follows: “<i>service policies appropriately through to the point at which all obligations under the policy have been satisfied; disclose to the policyholder information on any contractual changes during the life of the contract; and disclose to the policyholder further relevant information depending on the type of insurance product.</i>”</p>

<p>Both the Rule and SOG would be better served by stating the intended objectives of the Rule/SOG (e.g. fair treatment) as opposed to creating requirements to ensure certain outcomes.</p>	<p>The Authority has decided to add further guidance to the SOG section 5.2 "Fair Treatment of Customers" to include 6 customer outcomes as outlined in ICP 19.</p>	<p>Section 5.2.1 of the SOG has been amended to include 6 customer outcomes as outlined in ICP 19.</p>
<p>The SOG contains a section on Insurer conducting 'appropriate' due diligence on intermediaries. More explanation as to what constitutes appropriate due diligence should be provided.</p>	<p>Section 5.1.2 of the SOG: requires Insurer to verify that its intermediaries are licensed in the jurisdiction in which it operates. The way this section is worded, it could be interpreted as CIMA requiring the insurers to make sure or demonstrate that its intermediaries are licensed. Whilst ICP 18.2 requires supervisors to ensure that insurance intermediaries operating in its jurisdiction to be licensed, there's no explicit ICP requirement for Insurers to work only with licensed intermediaries. This could be due to varies types of intermediaries operating including digital intermediation, could be due to some jurisdictions not having a licensing framework for intermediaries. On the other hand, sophistication of licensing frameworks and supervision could vary significantly from jurisdiction to jurisdiction. Suggest rephrasing 5.1.2 to make it clearer that Insurers must check if an intermediary they</p>	<p>The section of the SOG has been amended.</p>

		are using a) is licensed or not, and b) if not, whether the law in the jurisdiction in which it operates does not require a licence.	
Section Market Conduct Rule	Industry's Comments	CIMA's Response	Action
Section 3.2	This section should be rewritten. At present it could easily be read as applying to all Class B Insurers where presumably, this is not the intent. Market conduct is a non-issue for captive insurance.	The Rule on Market Conduct does not apply to B(i) Insurers. Section 3.2 aims to make that clear; however the Authority concedes further clarification is useful.	The Authority will amend section 3.2 to say "retail third party policy-holders".
Section 3.3	This section should state that the Rule does not apply to reinsurers.	Neither the Rule nor the SOG on Market Conduct applies to reinsurance business. The Authority will delete the word "domestic" as it is misplaced and will make the exclusion of reinsurance business explicitly clear.	The Authority will modify this section to say that the Rule does not apply to "reinsurance business".
Section 5.2.1	This section is excessively broad and vague. Beyond confirming that an intermediary is licensed, what due diligence can be performed? In part b of this section an intermediary must be qualified to advise. This is also excessively broad. Not all intermediaries play an advisory role and not all products require advice. In addition, how will CIMA assess the "appropriateness" of the qualification? Additional specific guidance would be beneficial.	The Authority has a similar requirement under The Insurance (Reporting) Regulations, 2013 for Class 'A' insurers where we require Class A insurers to confirm that the agents distributing their products are fit and proper persons. ICP 18.3 requires insurance intermediaries to maintain appropriate levels of professional knowledge and experience, integrity and competence. The will rephrase section 5.2.1(a) to be in line with the ICP 18.3.	Amend section 5.2.1 as follows: " <i>Insurers must conduct due diligence that provides satisfactory evidence that the intermediaries that distribute their products maintain appropriate levels of professional knowledge and experience, integrity and competence to advise or inform customers on the features and characteristics of the products they offer.</i> "
Section 5.2.2	The use of the term framework in this section is unclear. An insurer should	The Authority will amend the section for clarity.	The Authority to amend section 5.2.2 to state the

	have oversight of the intermediaries it engages consistent with the functions they perform under contractual arrangements and may include compliance and conduct issues.		following: <i>“Insurers must have a framework including practices, policies and procedures to manage compliance or conduct issues with any intermediaries employed.”</i>
Section 5.3.5	The intent of section 5.3.5 is unrealistic. As noted, intermediaries can act in a variety of capacities. In a number of cases, the insurer has very limited or no control over an intermediary, e.g. a broker. We ask CIMA to consider deleting this section.	The Authority will re-word the section for clarity but notes that the section is explained in the corresponding section of the SOG.	Re-word the section to say the following: <i>“Insurers must have policies and procedures in place for dealing with intermediaries so as to ensure fair treatment of customers.”</i>
Section 5.10.2	This section refers to an “independent” review. What are the criteria for independence? Insurers will commission advertising firms to create advertising programs or promotional material which management at the insurer reviews. We ask CIMA to consider deleting this section.	The Authority expects some person other than the person who created the advertisement to review it. It can be screened within the organization.	The Authority will amend the section to clarify the point that an “independent review” can take place within the organization.
Section 5.12.1	This section is excessively broad and vague. Claims settlement periods differ considerably by product and claim. There is no objective manner by which to determine what is fair or timely. We ask CIMA to consider deleting this section or provide additional clarity.	There is a body of case law that speaks to the duty to act fairly, in the making of decisions which affect rights, interests and legitimate expectations of customers, subject only to the clear manifestation of a contrary statutory intention. As such, “fair and timely” are reasonable terms. The Authority expects licensees to use a reasonableness when determine what a fair timelines. At the time of inspection, the Authority will place emphasis on whether or not written procedures exist and whether the licensee is adhering to their own policies	None

		and procedures.	
Section 5.12.3	See comment above.	See comment above	None
Section 5.12.5	In this section, what are the criteria for independence? We ask CIMA to consider deleting this section.	The Authority expects there to be internal controls in place for the review of declined claims. The Authority also agrees that Section 5.12.5 of the Rule is also unclear and will amend.	The Authority will clarify this section to make this point clear. <i>“Insurers must have appropriate controls and systems in place for reviewing declined claims”.</i>

Section Market Conduct SOG	Industry’s Comments	CIMA’s Response	Action
Section 3.1	This section is unclear and possibly in contradiction to the rule with respect to how the SOG applies to digital and non-digital business.	The Authority agrees with the comments provided.	The SOG will be amended to be in line with the Rule.
Section 4.2	CIMA should consider aligning definitions in the Rule and SOG to be consistent.	The Authority agrees with the comment provided.	The Authority will align the definitions to ensure consistency.
Section 5.1.3	CIMA should consider giving guidance on “sufficiently qualified or trained”.	The Authority expects the licensee to employ the proportionality principle.	None
Section 5.1.6	<p>There is a requirement that insurers have agreements with intermediaries that act on their behalf. Brokers do not act on behalf of insurers. Hence requirements that may be appropriate for brokers are not appropriate for agents and vice versa.</p> <p>Also, many of the elements in 5.1.6 are irrelevant or too vague. This list should be substantially revised or we would ask CIMA to consider deleting.</p>	<p>The Authority agrees that brokers do not act on behalf of the insurer. The intention of Section 5.1.6 was to require insurers to have agreements in place with intermediaries that distribute their products. For accuracy, the Authority will amend Section 5.1.6 of the SOG.</p> <p>The Authority has developed the guidance in this section in line with the standards outlined in ICP 19. There may be elements listed that do not apply to one particular business arrangement. Licensees are only required to</p>	The Authority will amend Section 5.1.6 to state the following: <i>“Insurers should ensure they have written agreements with the intermediaries that act on their behalf and distribute their products.”</i>

		take inventory of all the activities listed and ensure that where they are participating in one of the activities there are adequate controls in place.	
Section 5.4.4	This section requires policies and procedures that amongst other things should ensure that customer data is not used unfairly. This is not intelligible and cannot be complied with.	The Authority does not agree with this sentiment. The requirements in this section are in line with ICP 19. Moreover, Schedule 1 Part 1 – of the newly passed Data Protection Law, 2017 promotes the fair treatment of data. The <u>first principle</u> under Part 1 states the following: <i>“Personal data shall be processed fairly.”</i> The second principle under Part 1 further states that: <i>“Personal data shall be obtained only for one or more specified lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”</i> The Data Protection Law will come into force in 2019.	None
Section 5.9.2	Some of the requirements listed did apply to neither brokers nor agents for example Section 5.9.2 of the Rule that requires insurers and intermediaries to have safeguards to ensure obligations under a policy contract are satisfied.	The Authority contends that intermediaries, in cases where there is an ongoing relationship between the customer, have an obligation to ensure that policy they distribute are satisfied. This expectation is also supported by ICP 19.9.3 <i>“Although ongoing policy servicing is traditionally seen as primarily the responsibility of the insurer, intermediaries are often involved, particularly</i>	None

		<p><i>where there is an ongoing relationship between the customer and the intermediary. The insurer should remain ultimately responsible for servicing policies throughout their life-cycle, and ensuring that intermediaries have appropriate policies and procedures in place in respect of the policy servicing activities that they perform on the insurer's behalf."</i></p>	
Section 5.12.7	This section should be substantially reworded or eliminated as it is currently unclear.	The Authority agrees that this section could be clearer.	The Authority will reword for clarity.