

REPORT TO: CILEx REGULATION BOARD

FOR: DECISION

DATE: 18 JULY 2017

REPORT TITLE: PII RULE CHANGES

SUBMITTED BY: Victoria Purtill, Director of Authorisation and Supervision

PURPOSE OF REPORT:

1. This paper seeks formal approval to make an application to the LSB to amend the professional indemnity insurance (PII) rules and to amend the Minimum Wording that covers the insurance provided by the Qualifying Insurers.
2. The proposal deals with changes necessary to:
 - bring the minimum wording in line with the expectations of the Insurance Act 2015;
 - formalise changes to the minimum wording previously agreed with our Qualifying Insurers; and
 - extend the PII rules to cover Alternative Business Structures (ABS).

BACKGROUND

3. All entities authorised and regulated by CILEx Regulation must have professional indemnity insurance in place that complies with the rules and terms and conditions prescribed by CILEx Regulation.
4. The PII Rules and Minimum Wording have been designed to provide entities regulated by CILEx Regulation with cover against civil liability and professional negligence.
5. The proposed changes can be summarised as follows:
 - Adoption of the higher standard of disclosure and ‘fair presentation of the risks’ to bring our minimum wording in line with other regulators interpretation of the Insurance Act 2015.
 - Formalise changes previously agreed relating to the run-off cover and payment of the excess.
 - Extend the definitions in the PII rules to cover ABS.
6. The annexes to the paper can be found in [CRL Board](#) Sharepoint for review – see Calendar/18 July 2017/CRL Board meeting. They are as follows:
 - Draft rules (Annex 1)
 - Draft Minimum Wording (Annex 2)
 - Consultation documents (Annex 3 and Annex 4)

7. We have been liaising with the LSB in relation to the proposed amendments to the professional indemnity insurance rules and minimum wording and a draft application will be prepared to be submitted alongside the Licensing application.

ISSUES FOR CONSIDERATION

8. We have consulted on the proposed changes and the consultation analysis is attached at Annex 4.
9. In summary, CILEx Regulation sought the views of consultees on the following proposed changes:
 - That the Minimum Wording should adopt the non-consumer standard of non-disclosure in line with other regulators.
 - The Minimum Wording should be amended to incorporate changes to payment of run-off and payment of an excess whilst in run-off.
 - Extending the PII scheme rules to include ABS.
10. We had previously engaged with our Qualifying Insurers on these proposed changes which had broadly been accepted and we believe that this is reflected on only having received one response to the consultation.
11. The one respondent was supportive of the majority of the changes although expressed concerns at the intention to bring the minimum wording in line with other regulators in respect of the provision of run-off cover when a firm is in default.
12. As a result of the consultation responses, we have decided to proceed with the changes as consulted on without any amendments. The Insurance Act changes will allow us to adopt the non-consumer standard to ensure that firms meet a high standard when presenting any risk to an Insurer.
13. There is a risk that one of the insurers may decide not to continue as a Qualifying Insurer in the light of the changes to run-off provision. They currently do not provide PII to any of our entities nor are we aware that they have quoted. We have consulted with Marsh on this risk and they believe that it will not impact on the provision of PII to our applicant entities.
14. With discussions again around regulatory switching, we do believe that having minimum wording that is broadly similar to other regulators will be a benefit, in the future, in attracting other insurers to become Qualifying Insurers, where they wish to maintain existing business.
15. Whilst there could be a general market risk of insurers deciding not to offer cover to our entities, we are implementing a similar arrangement that exists with other regulators. We have also discussed these issues with the insurers at our last Joint Advisory Panel meeting.

RECOMMENDATION:

- The Board is asked to approve the submission to the LSB, of the application to amend the PII rules and minimum wording.

IMPACT ASSESSMENT:

Public/Consumer	
Consumer	Enhances consumer protection and meets higher standards by fully implementing Insurance Act
Public interest	Aligned with providing protection to the consumer
Environment	None
Regulated Community	
Cost of Regulation	No direct impact on regulatory cost.
Equality and Diversity	No direct impact
Us	
Reputation/Brand	Maintains our position of providing appropriate consumer protection in line with other regulators across all entities
Resources:	No significant impact
Operations:	Time resource has previously been committed for the redrafting and consultation work by the Senior Team
Risk:	Risk of PII insurers backing out of market for our entities
Finance:	No impact
Legal:	Outstanding requirement to comply with Insurance Act 2015, satisfied through these changes
IT:	No direct impact

APPENDICES (accessible in Board Sharepoint):

- Annex 1: Draft rules
- Annex 2: Draft Minimum Wording
- Annex 3: Consultation document
- Annex 4: Consultation responses analysis