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Ministry of Business, Innovation & Employment
15 Stout Street
Wellington 6011

consumer@mbie.govt.nz

by email

**INSURANCE PREMIUM FUNDERS INDUSTRY GROUP - SUBMISSION ON EXPOSURE
DRAFT OF CREDIT CONTRACTS AND CONSUMER FINANCE AMENDMENT
REGULATIONS 2020 – REGULATORY EXEMPTION SOUGHT FROM THE
APPLICABILITY OF SECTION 9C(3)(a) OF THE CCCFA TO INSURANCE PREMIUM
FUNDERS**

Introduction

- 1 This submission is made by Chapman Tripp on behalf of the Insurance Premium Funders Industry Group (the *Group*), which represents the majority of New Zealand stand-alone specialist insurance premium funding businesses, being those listed in **Schedule 2**. Consumer insurance premium funding services are also provided by approximately 60 smaller insurance broker businesses, which are members of the Insurance Brokers Association of New Zealand Inc., which supports this submission.
- 2 It is estimated by the Group that:
 - 2.1 of the approximately \$3 billion¹ New Zealand consumer general insurance market, 1/3 of this premium is written through financial advisers; and
 - 2.2 personal and domestic insurance premium funding products (which are available to consumers in New Zealand only through financial advisers) are utilised by approximately 40% of advised New Zealand consumers (equating to approximately \$400 million of annual premium).
- 3 New Zealand premium funders also service the commercial premium funding market. However, this submission focuses only on those premium funding products **which are “consumer credit contracts” for the purposes** of section 11 of the Credit Contracts and Consumer Finance Act 2003 (*CCCFA*).
- 4 Insurance premium funding is a simple form of finance in the form of low value loans to every day New Zealand consumers, providing them with the flexibility to spread the cost of their annual insurance premiums for their home, contents and/or motor vehicle cover to assist with their cash flow management. It is an alternative to consumers paying large insurance premium costs upfront in one lump sum.

¹ Annual premium income.

Insurance premium funders also provide consumers with the ability to consolidate the funding of all of their annual general insurance premiums under one premium funding agreement. Insurance premium funding does not require consumers to provide personal guarantees or charges over their assets. Rather, the consumer assigns all insurance proceeds to the insurance premium funder (including any refunded premiums in the event of the cancellation of the insurance policy) as security for all payments owing.

- 5 Insurance premium funders pay the annual premium(s) on behalf of a consumer in full (**either via the consumer's adviser or direct to the insurer**), and the consumer repays the insurance premium funder across the term of the premium funding contract (typically 10 to 12 months) in predominantly monthly² instalments, which include an interest component. It is estimated by the Group that in respect of an average consumer premium funding loan of \$2,495, the average interest cost over the term of the loan is \$218.³
- 6 Providing insurance premium funding solutions to enable consumers to spread the cost of their annual insurance premiums is an important aspect of the retail general insurance market, and, as discussed in paragraph 2 above, one that many consumers rely on.
- 7 More information on the New Zealand consumer insurance premium funding sector is set out in **Schedule 1**.

Overview of submissions

- 8 This submission is in relation only to the applicability to insurance premium funders of the requirements which will apply to "lenders"⁴ when they assess the affordability and suitability of loans to consumers to fund insurance premiums under sections 9C(3)(a) and (5A) of the CCCFA, including the new prescriptive requirements which are proposed to be introduced by Regulations 4AA and 4AC to 4AH of the exposure draft of the Credit Contracts and Consumer Finance Amendment Regulations 2020 (*Amendment Regulations*).
- 9 The Group makes the following submissions, all of which are explained in more detail in the body of our submission below:
 - 9.1 the Amendment Regulations should be amended to provide for the inclusion in the Credit Contracts and Consumer Finance Regulations 2004 of a new regulatory exemption which relieves insurance premium funders from the need to comply with the requirements under section 9C(3)(a) of the CCCFA in relation to the assessment of the affordability and suitability of loans to consumers to fund insurance premiums. The Group proposes that this exemption is granted subject to certain conditions, including that the exemption applies only to premium funding agreements under which neither credit fees (other than establishment fees), default fees or default interest

² Weekly, fortnightly and quarterly payment options are also available from some consumer insurance premium funders.

³ Based on an estimated average flat rate of 8.7% p.a. (being an annual interest rate of 17.9% p.a.).

⁴ As defined in section 9B, CCCFA.

rate charges are payable. In addition, the definition of “premium funding agreement” proposed to be covered by the new regulatory exemption would limit the security an insurance premium funder can take for payment of the loan (i.e. security is limited to the funded policy). This effectively ensures that insurance premium funders who have the benefit of the exemption are lending to consumers on a non-recourse basis in the event of the non-repayment or cancellation of the loan. The Group understands that this is consistent with the approach taken in Australia, where relief is granted in an exclusion under the National Credit Code for insurance premium funder’s contracts that are substantially equivalent to the types of insurance-by-instalment arrangements covered by the exclusion in section 6(8) of the National Credit Code (**see paragraphs 11 to 19 below**);

9.2 if insurance premium funders operating in the New Zealand personal and domestic premium funding market are required to comply with the new prescriptive requirements set out in Regulations 4AA and 4AC to 4AH of the Amendment Regulations (in relation to the assessment of the affordability and suitability of loans to consumers to fund insurance premiums), the increased regulatory burden and compliance costs for these insurance premium funders will be significant, and disproportionate to the benefit gained by consumers from low value loans which meet a standardised, non-discretionary need. There could be significant negative implications for the New Zealand consumer premium funding market if this were the case, with an unintended consequence of the increased regulatory obligations (and the corresponding increased cost of compliance) on insurance premium funders being the threat of reduced competition and consumer choice (**see paragraphs 20 to 24**); and

9.3 insurance premium funders provide a good alternative to New Zealand consumers, enabling them to spread the cost of their annual insurance premiums for home, contents and/or motor vehicle insurance cover. Insurers who allow consumers to pay their premiums in monthly instalments, and increase the total premium payable as a result through ‘surcharges’, are not caught by the CCCFA, whereas consumer insurance premium funders are, which creates a competitive disparity (**see paragraphs 25 to 30**).

10 Our detailed submissions are below.

Detailed submissions

Ministerial regulatory exemption making power should be used to relieve insurance premium funders from the need to comply with affordability and suitability requirements

11 The CCCFA will be amended by sections 10 and 11 of the Credit Contracts Legislation Amendment Act 2020 (*Amendment Act*), which will introduce:

11.1 a new section 9C(5A) which requires every “lender”⁵ to comply with regulations made under section 138(1)(abe), CCCFA in relation to the

⁵ Insurance premium funders are “lenders” as that term is defined in section 9B, CCCFA in respect of premium funding provided to consumers who are natural persons (as distinct from businesses)

requirement to make “reasonable enquiries” in respect of the matters set out in section 9C(3)(a), i.e. Regulations 4AA and 4AC to 4AH of the Amendment Regulations; and

11.2 a new section 9CA which requires (amongst other things) records to be kept by the “lender” about inquiries made by the “lender” under section 9C(3)(a) (including the results of those inquiries).

12 The Ministry of Business, Innovation & Employment (*MBIE*) states in paragraph 8a. of the Exposure draft of the “Credit Contracts and Consumer Finance Amendment Regulations 2020 Commentary and request for submissions” dated November 2019 that:

“We are aware that the draft regulations may not adequately account for the broad variety of situations which occur in practice. We seek specific feedback on the type of situations for which the requirement may be inappropriate....”

13 For the reasons described in detail below, the Group submits that the requirement for insurance premium funders to comply with the new prescriptive affordability and suitability tests proposed to be introduced would be inappropriate, and could impact **significantly on insurance premium funders’ consumer businesses. This could have** an unnecessarily negative impact on the development and continuation of these businesses, to the detriment of New Zealand consumers.

14 Section 138(1)(aba), CCCFA (inserted by the Amendment Act) provides that the Governor General may, by Order in Council, make regulations “**exempting any person or class of persons...from applying any provision or provisions of this Act, and prescribing the terms and conditions (if any) of the exemption.**”

15 Section 138(1A), CCCFA provides that regulations can be made under subsection (1)(aba) only on the recommendation of the Minister, and the Minister may make a recommendation only if he:

15.1 has had regard to the purposes of the CCCFA set out in section 3; and

15.2 is satisfied that the exemption would not cause significant detriment to debtors under credit contracts; and

15.3 is satisfied, in the case of subsection (1)(aba), that compliance with the provisions of the CCCFA relating to consumer credit contracts would, in the circumstances, require a creditor or class of creditors to comply with requirements that are unduly onerous or burdensome.

16 The Group submits that these criteria are met for the following reasons:

16.1 the primary purpose of the CCCFA, “**to protect the interests of consumers in connection with credit contracts...**”, will continue to be met if the regulatory

where the premium funding is to be used to pay premiums for the person’s house, contents and/or motor vehicle insurance, as the test in section 11, CCCFA is met.

exemption sought by the Group is granted to insurance premium funders. **Insurance premium funders will still be creditors under “consumer credit contracts” and comply with all other obligations** under the CCCFA (for example, consumers will continue to receive disclosure and have the benefit of a cooling-off period). The regulatory exemption sought is more limited than the relief the Group understands is granted to insurance premium funders in Australia;

- 16.2 the regulatory exemption sought will obviate the need for time consuming, costly and dualistic assessments which would otherwise be imposed by the Amendment Regulations on insurance premium funders, because:
- (a) insurance premium funding is available only to consumers who place their general insurance through financial advisers, not in respect of non-advised, direct to customer general insurance sales. Insurance premium funders already receive the information Regulation 4AA **requires them to obtain and assess from the consumer’s** financial adviser (i.e. the amount of finance the borrower seeks is the amount of their annual premium(s), the purpose of the finance is to enable payment of the premium(s) and the term of the finance typically aligns with (or is shorter than) the term of the general insurance policy(s) for which the premium(s) need to be paid);
 - (b) consumers seek premium funding only to assist with payment of their general insurance premiums (this is the only service insurance premium funders provide), so premium funding contracts will meet the **consumer’s requirements and objectives**. The loan is unable to be used by the consumer for any other purpose (as the loan amount is paid by the insurance premium funder directly to the insurer or to the **consumer’s financial adviser** in satisfaction of the full amount of the annual premium(s) payable), and is not related to a discretionary purchase. Premium funding products are protecting and assisting customers to safeguard their assets (house, contents and motor vehicles), and are not funding unnecessary discretionary spending via marketing campaigns or encouraging consumers to take on more debt;
 - (c) the question of affordability and suitability in respect of an insurance premium funding contract is limited to the cost of interest. The Group **submits this does not require a detailed assessment of a consumer’s** likely income and likely relevant expenses as is proposed by Regulations 4AC to 4AH of the Amendment Regulations. If a client ceases to pay the instalment payments due to their insurance premium funder, they may lose their insurance cover (as would be the case if they failed to make payment of monthly premium instalments directly to an insurer), but they do not generally incur any default interest charges or default fees. The Group also understands that it is uncommon for prepayment fees or cancellation fees to be charged to consumers by insurance premium funders, and consumers can cancel their insurance contract without consent of the funder without being liable for payments not incurred. As described in paragraphs 9.1 and

17, the Group submits that the regulatory exemption sought applies only in respect of those premium funding agreements under which neither credit fees (other than establishment fees), default fees nor default interest charges are payable by the consumer (the debtor);

- (d) insurance premium funding interest rates are competitive when compared to other sources of funding (e.g. using a credit card or personal loans). The Group estimates that the average flat rate for a consumer premium funding contract is 8.7% p.a. (being an annual interest rate of 17.9% p.a., and averaging \$218 in interest for an average consumer premium funding contract for an annual premium of approximately \$2,495);
- (e) premium funding contracts are annually renewable (as are general insurance contracts) so the requirements of sections 9C(3)(a) and (5A), CCCFA would need to be met and evidenced at least every year. Repetitive assessments of **a consumer's likely income and likely** relevant expenses for renewal business for the same client are an issue, being unnecessary, costly and time consuming for insurance premium funders, and potentially resulting in a poor customer experience in the circumstances of a low value, (at least) annually renewable premium funding agreement; and
- (f) for the reasons described in paragraphs 20 to 24 below, requiring insurance premium funders to comply with the amended affordability and suitability requirements would be unduly onerous and burdensome, resulting in a potentially significant increase in compliance costs, which would be disproportionate to the benefits gained by consumers who use premium funding services to spread the cost of their annual general insurance premiums.

17 **The Group therefore submits that the following be included as a new clause 9 in the Amendment Regulations:**

9 New regulation 18D inserted

After regulation 18C, insert:

18D Exemption from affordability and suitability tests for certain premium funding agreements

- (1) Subclause (2) applies to a premium funding agreement that is a consumer credit contract.
- (2) The premium funding agreement is exempt from the application of the following sections of the Act:
 - a) section 9C(3)(a); and
 - b) sections 9C(5A) and 9CA (to the extent that those

subsections relate to inquiries made in respect of the matters described in section 9C(3)(a)).

(3) The exemption given by subclause (2) applies only if:

- a) neither credit fees (other than establishment fees), default fees nor default interest charges are payable by the debtor under the premium funding agreement; and
- b) the debtor under the premium funding agreement is introduced to the creditor by:
 - i. a person who provides a financial advice service (**P**); or
 - ii. a person engaged by P to give regulated financial **advice to P's clients on P's behalf**.

(4) In this regulation, a **premium funding agreement** means an agreement under which –

- a) a person agrees to make a loan to the customer to be applied –
 - i. against the amount payable for premiums under a policy of insurance; or
 - ii. against an amount payable in connection with such policy (including, but not limited to, fees for advice or services provided in connection with such a policy and taxes payable in connection with such a policy); and
- b) the person obtains from the customer, as security for payment of the loan, 1 or more of the following:
 - i. an **assignment of the customer's interest in the policy**;
 - ii. an assignment of all of the amounts payable under the policy;
 - iii. a power of attorney that must provide the right to cancel the policy.

18 The Group further submits that if the above regulatory exemption sought from the affordability and suitability requirements is not granted, then the Amendment Regulations should instead be amended so that:

- 18.1 relief is granted from the application to insurance premium funders of the requirements of Regulations 4AA and 4AC to 4AH of the Amendment Regulations;
- 18.2 insurance premium funders are able, for the purposes of inquiries required under section 9C(3)(a), CCCFA, to rely on information provided by the borrower unless the insurance premium funder has reasonable grounds to believe that the information is not reliable;⁶ and
- 18.3 in respect of repeat customers, from whom the insurance premium funder has already received affordability and suitability information (for the purposes of the insurance premium funder meeting its obligations under section 9C(3)(a), CCCFA), the insurance premium funder is not required to seek any further information from the customer unless there has been a material change to the **customer's circumstances** since the information was provided.
- 19 Alternatively, the Group submits that the Amendment Regulations should be amended so that insurance premium funders are not required to comply with section 9C(3)(a) and sections 9C(5A) and 9CA, CCCFA (to the extent that those subsections relate to inquiries made in respect of the matters described in section 9C(3)(a)), in the event that the credit extended under a premium funding agreement is \$10,000 or less.

Compliance with the affordability and suitability tests to be introduced by the Amendment Act and Amendment Regulations would have a disproportionate negative impact on insurance premium funders' consumer premium funding businesses

- 20 The Group submits that it would be a disproportionate regulatory response for the requirements of Regulations 4AA and 4AC to 4AH to apply to insurance premium funders.
- 21 A 'one size fits all' regulatory approach in respect of the application of the new affordability and suitability tests could have the effect of significantly reducing (or in some cases, excluding) the availability of insurance premium funding to New Zealand consumers, and the benefits of this product.
- 22 It is not simply a matter of increased compliance costs for those insurance premium funders who service New Zealand consumers. The Group understands that there would in many cases be significant technology rebuilds required in order to enable compliance with the proposed new affordability and suitability requirements, and in some cases it would be very difficult for insurance premium funders to continue their consumer businesses in New Zealand if they are required to comply with the new affordability and suitability tests.
- 23 The consumer premium funding sector is directly affected by the insurance market, since funding is calculated as a percentage of total premium. The Group believes that the increased compliance costs incurred in relation to meeting the verification

⁶ This would in effect maintain for insurance premium funders the 'status quo' prior to the CCCFA being amended to repeal section 9C(7), and the Amendment Regulations coming into force.

obligations in the Amendment Regulations would result in limited benefits to consumers who wish to utilise premium funding, while further squeezing the consumer premium funding industry, and may result in premium funders exiting the consumer premium funding market.

- 24 The Group believes the regulatory burden of compliance with the new affordability and suitability tests by insurance premium funders would be unduly onerous and burdensome, and out of proportion with the low level of risk of harm to consumers who use insurance premium funding products (all of whom are clients of financial advisers).

Competitive disparity between consumer insurance premium funding and insurer "pay by month" solutions would be magnified

- 25 New Zealand general insurers offer "pay by month" facilities to consumers who purchase their general insurance products, which allow consumers to make payment of their annual premium to the insurer in instalments. The cost to the consumer for accessing this facility is an increase in the total amount of premium payable (i.e. the instalments exceed the total of the premium that would have been payable if the premium were paid in a lump sum).
- 26 The Group considers that **insurance premium funder's premium funding agreements are substantially equivalent to the types of "pay by month" insurance facilities** which are provided by insurers.
- 27 However, unlike insurance premium funders, general insurers are not regulated by the CCCFA **in respect of the offer of "pay by month" facilities**. This is notwithstanding the fact that:
- 27.1 general insurers are conceptually offering the same solution to consumers as insurance premium funders; and
- 27.2 the overall premium cost to the consumer is still increased by the insurer (by **way of a 'surcharge'**) for those consumers who elect to spread their premium payments throughout the year, compared to those who make payment of their premium to the insurer in one lump sum.
- 28 Put another way, both general insurers and insurance premium funders offer New Zealand consumers the ability to convert their annual premium into a monthly instalment, but insurance premium funders are subject to significantly more onerous regulatory obligations and compliance costs because they are regulated **as "lenders"** under the CCCFA.
- 29 **This creates a competitive disparity between insurers offering "pay by month" facilities and consumer insurance premium funders, as insurers are not required to comply with the obligations of the CCCFA imposed on "lenders"**.
- 30 The Group submits that this competitive disparity will be further magnified with the introduction of the new prescriptive requirements of the Amendment Regulations in relation to the assessment of the affordability and suitability of loans. This could result in competition and consumer choice being removed from the industry, if the

regulatory exemption sought in paragraph 17 of these submissions is not extended to insurance premium funders.

SCHEDULE 1

Overview of consumer insurance premium funding

- 31 Insurance premium funders provide New Zealand consumers with personal or domestic insurance premium funding products. These products provide consumers with the flexibility to manage their insurance premiums by spreading insurance premium costs across the year in instalments.
- 32 Consumer loans under premium funding contracts are generally low value, repaid over 10 to 12 instalments, and are renewed annually, aligning with the term of general insurance contracts. Premium funders enter into new agreements with their existing customers each year (as do general insurers).
- 33 The cost of insurance premium funding to the consumer is generally only the interest payable to the insurance premium funder (together with an establishment fee in some cases).
- 34 Insurance premium funding does not require consumers to provide personal guarantees or charges over their assets. Rather, the consumer assigns all insurance proceeds to the insurance premium funder (including any refunded premiums in the event of the cancellation of the insurance policy) as security for all payments owing.

SCHEDULE 2

Insurance premium funding businesses

Bexhill Funding Group Limited

Elantis Premium Funding (NZ) Limited

Financial Synergy Limited

IQumulate Premium Funding Limited and IQumulate Funding Services Limited

Monument Premium Funding Limited

Rothbury Instalment Services Limited