Blanch, Belinda

From:	Howes, Neil
Sent:	Wednesday, 22 June 2011 1:10 PM
To:	!Adjudication Administration Team
Cc:	Channing, Darrell
Subject:	FW: Request for further information [SEC=UNCLASSIFIED]
Security Classification: UNCLASSIFIED	

From: Howes, Neil
Sent: Thursday, 16 June 2011 12:10 PM
To: rkarp@eraa.com.au
Cc: 'Ramy Soussou'; 'coreilly@eraa.com.au'; Channing, Darrell
Subject: Request for further information [SEC=UNCLASSIFIED]

Rebecca,

Definition of systemic issues

In its submission dated 2 June 2011, Energy Assured Limited (EAL) argues that to define a systemic issue as suggested by EWOV (in its submission dated 27 May 2011 – changing '…numerous…' to '…one or more..' in clause 28.2) is unwarranted and impracticable.

EAL is concerned that adopting this suggestion would create an unacceptable risk that sanctions would be inappropriately attached to breaches that are isolated in nature, despite no inherent issue in the overall system of the member.

The ACCC notes and understands EAL's concerns.

However, the ACCC also accepts EWOV's submission that a systemic issue in marketing can be reflected in the conduct of a single sales agent which then potentially affects large numbers of consumers.

The ACCC is inclined to the view that EWOV's proposed change to clause 28.2 ensures that all types of systemic issues are covered, without creating the risk for members because:

(a) the clause still clearly distinguishes between breaches that are made *consistently* as opposed to *isolated incidents* and
(b) the ACCC notes that clause 19.5(1) of the code appears to accept that conduct by a single sales agent may represent a systemic issue

The ACCC would appreciate any further views from EAL on this issue as a matter of urgency.

Regards,

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