



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

Compiled Comments on *Consultation on Application Paper on Approaches to Supervising the Conduct of Intermediaries*

Public consultation period: 1 July 2016 – 1 August 2016

Public discussion session

18 October 2016

Organisation /individual	Jurisdiction	Answer	Resolution of comments (Para references are to revised draft)
- General Comments			
World Federation of Insurance Intermediaries	Belgium	WFII welcomes the opportunity offered by the IAIS to comment on its draft Application Paper on Approaches to Supervising the Conduct of Intermediaries. The Paper gives examples of approaches to supervising which the supervisors may consider when developing or reviewing a supervisory regime for intermediaries in their jurisdiction. Although we do have the impression that this is done in a neutral way and that the Paper does not try to suggest that one approach is better than another we would appreciate if this could be mentioned explicitly in the introduction, for example in paragraph 4. Further, despite paragraph 5 which mentions that: (...) The supervisory framework should take account of all relevant industry participants in order to ensure fair treatment of customer, paragraph 11 states that: While insurers can use various distribution channels to market and sell insurance products, this Paper focuses on the use of insurance intermediaries. We regret that this Paper only focuses on insurance intermediaries and no longer on all kinds of insurance distribution as was its first intention in the early drafting days when the original title of the Paper was Application Paper on Approaches to the Supervision of Intermediaries/ Distribution. Will the IAIS, in the near future, deliver a Paper that takes into account all kinds of distribution channels (including Fintech) in order to really ensure the necessary level playing field in the supervisory framework for all the market players? We would like to see that the Introduction gives more guidance to the supervisors on how to look at the provided examples of the variety of approaches that they may use to supervise intermediaries. When implementing one or another approach, we believe this should always be done with respect for the following: - There should always be a right balance between regulatory intervention and an open competitive market. - Supervisors should ensure that the right balance is maintained between the effectiveness of an existing supervisory framework and the costs and benefits of possible changes in this framework. Supervisors should always first make an analysis of the concerns in their jurisdiction. - Supervisors should recognise that there is a distinction to be made in supervisory requirements between life insurances with an investment element and pure life insurance products/non-life insurance products. The "riskiness" for the consumer is very much different for both and therefore requires a different supervisory framework. - Supervision should be risk-based and apply the concept of proportionality.	Other (digital) distribution channels will be considered in future work. Noted – these points are largely reflected in the paper (eg section 3.1). Noted - there are several references to proportionality, taking into account complexity of products, in the paper. The introduction is considered reasonably balanced.

		We would like to see the above mentioned points be inserted in the Introduction.	
Global Federation of Insurance Associations	Global	The Global Federation of Insurance Associations (GFIA) welcomes the opportunity to comment on the IAIS Application Paper on Approaches to Supervising the Conduct of Intermediaries. Through its 41 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers that account for around 87% or more than \$4 trillion in total insurance premiums worldwide. GFIA contact: Leslie Byrnes, chair of the GFIA market conduct working group; lbyrnes@clhia.ca; About GFIA : Through its 41 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 60 countries. These companies account for around 87% of total insurance premiums worldwide. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.	Noted.
PCI	international	The Property Casualty Insurers Association of America (PCI) represents nearly 1000 insurers and reinsurers that provide coverage around the globe and use many kinds of intermediaries. We appreciate the opportunity to comment.	Noted
Dutch Association of Insurers	Netherlands	The Dutch Association of Insurers represents the interests of private insurance companies operating in the Netherlands. The Association's members represent more than 95 percent of the insurance market expressed in terms of gross premium income. The Association is an independent organization managed and financed by its members. The Dutch Association of Insurers took the initiative which has led to the ban on commissions for all complex and impactful products in the Netherlands. No commissions are allowed for financial products (life, pensions, unit linked, mortgages, payment protection, funeral) which are closed after 1 January 2013. Also there is a ban on inducements applicable (life and non-life).	Noted.
Center for Economic Justice	U.S.	After the issues of licensing and qualifications, the key consumer protection issue regarding insurance intermediaries is the potential or actual conflict of interest in the intermediaries' advice and sale of products. In the past few years, conflicted advice as a result of intermediary compensation schemes have cost consumers \$US tens of billions. Major scandals include: - The New York State Attorney General lawsuits and subsequent settlements with large insurance brokers over inflated premiums resulting from undisclosed contingent compensation - Massively-inflated charges for force-placed insurance by U.S. mortgage services to borrowers as a result of kick-back arrangements with force-placed insurers - Consumer credit insurance abuses in the U.S., U.K., Australia, South Africa and elsewhere as a result of compensation schemes for lenders serving as intermediaries. - Conflicted advice in U.S. retirement income product sales resulting in an estimate of \$17 billion in	Noted.

		lost income for consumers, according to a report by the President. - Insurance sales websites channeling consumers to higher-cost products based on the online aggregator's compensation as opposed to consumer need or eligibility. The conflict of interest - and associated consumer harm - resulted from compensation arrangements that failed to align the interest of the intermediary with that of the consumer. Consequently, the emphasis of the application paper should be on assisting supervisors to identify and address such harmful conflicts of interest. The paper should expand the discussion of the types of compensation schemes that create conflicts of interest and the types of supervisory responses to stop such compensation structures and to encourage compensation structures that align the interests of intermediaries and consumers. The paper should also explain in much greater detail the limited effect of disclosures and why disclosures have overwhelmingly failed to stop abuses resulting from conflicts of interest. If the paper is going to offer disclosure as a potential regulatory tool, the paper should provide some of the current understanding of the limits of disclosure in empowering consumers and the best practices for crafting effective disclosures in those situations in which a disclosure can empower a consumers. The paper should add discussion of the opportunities and challenges posed by online intermediaries and digital sales. The opportunities include more consistent advice, but the challenges include crafting effective disclosures for certain digital media, lack of transparency due to unseen Big Data evaluations and channeling of consumers in online shopping and the ability for supervisors to monitor the large and growing number of digital channels for sales.	These could be explored more fully as potential specific future work topics, but may go beyond the scope of this paper, which is broader. Limitations of disclosure are discussed in the paper. This may be considered for future work.
Peter Kochenburger [NAIC Consumer Representatives]	United States	The undersigned [Brendan Bridgeland, Sonja Larkin-Thorne and Peter Kochenburger] are 2016 NAIC Consumer Representatives who have been previously designated as consumer stakeholders at the IAIS and are active in its deliberations. We appreciate the opportunity to provide comments on IAIS' June 14, 2016 draft Application Paper on Approaches to Supervising the Conduct of Intermediaries (Draft). Note: We do not represent the NAIC and reference it to identify our interest and work; our comments are ours alone.	Noted.
NAPSLO	US	On behalf of the National Association of Professional Surplus Lines Offices (NAPSLO), we appreciate the opportunity to provide comments to the IAIS Application Paper on the Approaches to Supervising the Conduct of Intermediaries. NAPSLO is the professional trade association in the United States representing the surplus lines industry and the wholesale insurance distribution system. NAPSLO is unique in that both surplus lines brokers and surplus lines companies are voting members of the association; thus NAPSLO represents and speaks for the surplus lines wholesale marketplace. Comprised of approximately 400 wholesale broker member firms, 100 surplus lines insurance companies, and 200 associates and services providers to the surplus lines market, our membership operates in over 1,500 offices representing tens of thousands of individual brokers, insurance company professionals, underwriters and other insurance professionals worldwide - all of	Noted.

		whom are committed to the wholesale value distribution system and U.S. surplus lines market. NAPSLO wholesale broker members are placing an estimated \$35.3 billion in surplus premium and NAPSLO insurance company members are underwriting an estimated \$28.0 billion in surplus lines premium, representing 88% and 70%, respectively, of the surplus lines market in the United States. NAPSLO believes the proposed Application Paper generally follows the regulatory concepts that our members operate under and, while we have no significant concerns with the draft, we believe it is important to emphasize our strong support of U.S. regulatory requirements and system that our members operate under in an effective manner. The surplus lines marketplace has proven to be an essential part of the United States' national insurance market and operates successfully in the U.S. state-based regulatory system where business is exported from one state to another. We strongly favor the continuation of the state-based regulatory system, including the well-established regulatory system for insurance intermediaries. Our members are dedicated to the wholesale distribution system for surplus lines insurance and we therefore commend the draft's acknowledgment of wholesale intermediaries in paragraphs 16 and 17. The wholesale distribution system is critical to the innovative solutions the surplus lines market is able to provide to consumers that may otherwise have no choices for insurance coverage. We are pleased that the comments in the draft paper appear to support this model. We are further pleased to see that the Producer Licensing Model Act (PLMA), which provides a guideline on licensing intermediaries in the U.S., is acknowledged in the draft paper. We would likely have concerns if the Application Paper, or ICP 18, would go beyond the suggested guidance or application as established by the PLMA or U.S. regulatory system as we believe it promotes an effective and efficient model within our state-based system. While nothing specifically contained in the IAIS Draft Application Paper would cause alarm for NAPSLO, we urge the IAIS to recognize and consider the success of the U.S. insurance market and the wholesale distribution system in particular when considering recommendations for insurance supervisors. The surplus lines market and wholesale distribution system offer critical coverage choices and solutions for consumers that may otherwise have no private market option. It is a strong and well-respected market making significant impacts on the development and continuation of commerce and industry in communities around the nation.	Noted. Noted – though the paper does not intend to favour any particular supervisory regime. Noted. Noted.
National Association of Insurance Commissioners	USA	As an application paper, it is important that the material reads as guidance and not prescriptive and/or requirements. In some paragraphs, using expressions such as, "the supervisor will want to" or "the supervisor will need to" sounds more prescriptive than intended and using "may" or "should" would be more appropriate. Suggest reviewing paragraphs 46, 68, 71, 96, 113, 115 and 162, for example.	See edits to 46, 96, 113, 115, 162 and elsewhere.

- Paragraph 1			
Dutch Association of Insurers	Netherlands	The Application Paper documents ideas on approaches that IAIS Member organizations may wish to consider when developing or revising a regime for the supervision of intermediaries, including when implementing Insurance Core Principles 18 (Intermediaries) and the relevant aspects of ICP 19 (Conduct of business) in their supervisory frameworks. In general we support ICP 18 and ICP 19. Some of the IAIS's ideas documented could in our view also be applicable for small insurers. Please see our comments on the paragraphs 30-33.	Noted.
Center for Economic Justice	U.S.	The paragraph presents the role of intermediaries as singularly beneficial - even stating that intermediaries "can also promote consumer protection." The paragraph should be more balanced to reflect the key consumer protection problem associated with intermediaries -- - harmful advice or sales as a result of intermediaries' conflict of interest - and indicate that a supervisor has consumer protection responsibilities beyond setting requirements to encourage and protect the role intermediaries in building trust and confidence in the insurance sector. The paragraph should also reference ICPs 18.5 and 19.7.	These issues are discussed elsewhere in the paper.
- Paragraph 2			
Center for Economic Justice	U.S.	The sentence should be revised to "In view of their key role and the potential for consumer harm, it is important that intermediaries"	We consider the current text to be balanced.
- Paragraph 5			
World Federation of Insurance Intermediaries	Belgium	In many markets there are many more intermediaries than there are insurers. This makes prudential regulation and supervision of insurers very different from the regulation and supervision of intermediaries. Prudential supervision embodies a regime of active engagement with the regulated entities to understand their business operations, monitor their risk management processes, and question and warn when they see developments that the company itself might not be considering. This process is much more difficult in relation to intermediaries and the costs for market conduct supervisors to interact with regulated intermediaries the way prudential supervisors interact with insurers may be proportionally too high. In this respect we regret the Paper is referring to the work and role of the conduct supervisor, on the apparent assumption that the supervisor would be performing a similar role to prudential supervisor of insurers. We believe the Paper should better highlight the difference between these supervisory frameworks. The Paper should mention that insurance intermediaries need a clear regulatory framework that sets out the legal framework within which they can operate. The legal framework should take account of	These points are largely addressed in section 3.1 and para 46. The paper does not make this assumption – see section 3.1. This paper is concerned with supervision, rather than the legal framework. Addressed in para 25.

		the key requirements of ICP 18, and any particular requirements of individual countries. The insurance framework should also operate in a consistent manner with other legal requirements on insurance companies and intermediaries, such as privacy and tax laws. The laws should be sufficiently clear and transparent so that a responsible insurance intermediary firm - local or from abroad - will be able to manage its affairs in a way that facilitates its compliance obligations while at the same time providing opportunities to innovate, compete, grow, and develop new products and services in order to meet the changing needs of its clients. With regard to the last sentence of this paragraph: "The supervisory framework should take account of all relevant industry participants in order to ensure fair treatment of customers." we make the following comment. There is constant reference to "fair treatment of customers" throughout the draft paper. Please note that in many countries around the world, this is not the law or the basis of the regulatory approach of the regulator. We therefore propose to change this sentence and to state that the purpose of supervision of intermediaries is to ensure the legal and regulatory obligations relevant to the jurisdiction are adopted and applied in the market place. We propose the following sentence: The supervisory framework should take account of all relevant industry participants in order to ensure fair treatment of customers the legal and regulatory obligations relevant to the jurisdiction are adopted and applied in the market place.	Disagree – the proposal focuses on form rather than substance. The current wording better describes the objectives (ie desired outcome).
- Paragraph 12			
World Federation of Insurance Intermediaries	Belgium	The split is not always so clear, often the intermediary provides services for both the client and the insurer. Perhaps this could be mentioned in this paragraph, as follows: Intermediaries generally fall into two categories, acting either primarily on behalf of the customer or primarily on behalf of the insurer. It should be noted that this distinction cannot always be made as often the intermediary provides services for both the client and the insurer.	Propose to leave – note the use of "generally". In both agent and broker model the intermediary generally serves both the client and the insurer to some extent. Wording is consistent with ICP 18.
Center for Economic Justice	U.S.	The paragraph should be expanded. Individual consumers and small businesses overwhelmingly deal with intermediaries acting on behalf of insurers - particularly with non-life and non-investment type life insurance products.	Propose to leave – not necessary and may depend on the market
Peter Kochenburger	United States	While the Draft's description of "agents" and "brokers" is in accord with standard legal definitions, in practice, the terms are often used interchangeably by courts, agents, brokers, industry sources and policyholders and the title or description often not helpful in determining the responsibilities intermediaries may owe to their customers, either in a specific instance or as a matter of public	Note that ICP 18 and this Application Paper are intended to apply to insurance intermediation (regardless of the agent/broker distinction).

		policy. A regulatory framework based on theoretical agent/broker distinctions may be outdated and not adequately protect consumers/policyholders, nor give sufficient guidance to intermediaries and supervisors. Determining whether an intermediary has acted as an "agent" or "broker" is usually fact dependent and sometimes only determined in litigation between customers/policyholders, intermediaries and insurers. Draft paragraphs 16-18 help capture this complexity. A better supervisory approach may be a presumption that intermediaries having direct contact with a consumer customer are considered agents of the insurer and bind the insurer in accord with a jurisdiction's insurance and agency laws. This approach would shift the economic consequences of inappropriate conduct or inadequate advice by an intermediary from the consumer to the insurer, who can far better evaluate and control these risks, and spread the attendant costs (e.g., of covering a claim otherwise excluded because of an agent's demonstrated representations). Draft paragraph 35 provides a good description of this type of approach and we recommend it receive additional consideration for inclusion in ICP 18.	For consideration re ICP 18 review.
- Paragraph 14			
World Federation of Insurance Intermediaries	Belgium	We suggest to delete the word independent from the text as this term is not defined in the same way in the different jurisdictions. We propose to have a text that is similar to paragraph 13 and could be as follows: Where the intermediaries act primarily on behalf of the customer they are often referred to as "brokers". Such intermediaries are able to select products from those available within a defined pool or across the market. Depending on an individual jurisdiction's market and legal context, these intermediaries may be required to compare a large range of products available on the market. In some markets the remuneration paid by insurers to advisers, referring to themselves as giving independent advice, is regulated or prohibited. This kind of measure needs to be considered carefully as it can hinder the ability of consumers to access the advice and guidance of insurance professionals.	The use of "independent" is consistent with ICP 18. Propose to leave. This is addressed in para 131.
- Paragraph 15			
Dutch Association of Insurers	Netherlands	With respect to the responsibility for manufacturing, marketing and distribution strategy of a product we propose to refer to article 25 of the Insurance Distribution Directive (EU 2016/97). Intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers. Intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product. Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information from the	Noted. Agreed to leave, as European Directive not yet fixed. Also, this goes beyond the subject of this para.

		manufacturer and to understand the characteristics and identified target market of each insurance product. A product approval process shall be proportionate and appropriate to the nature of the insurance product.	
- Paragraph 16			
NAPSLO	US	Our members are dedicated to the wholesale distribution system for surplus lines insurance and we therefore commend the draft's acknowledgment of wholesale intermediaries in paragraphs 16 and 17. The wholesale distribution system is critical to the innovative solutions the surplus lines market is able to provide to consumers that may otherwise have no choices for insurance coverage. We are pleased that the comments in the draft paper appear to support this model.	Noted.
- Paragraph 17			
NAPSLO	US	Our members are dedicated to the wholesale distribution system for surplus lines insurance and we therefore commend the draft's acknowledgment of wholesale intermediaries in paragraphs 16 and 17. The wholesale distribution system is critical to the innovative solutions the surplus lines market is able to provide to consumers that may otherwise have no choices for insurance coverage. We are pleased that the comments in the draft paper appear to support this model.	Noted.
National Association of Insurance Commissioners	USA	First sentence, "standards" may not be the right word given the content of this paragraph; suggest using: "Supervisory requirements and approaches may differ..."	Agreed
- Paragraph 19			
World Federation of Insurance Intermediaries	Belgium	This paragraph makes a statement about the preference of consumers that seems speculative, namely the suggestion that consumers favor the direct channel for insurance purchases that are not related to life insurance or investment-related placements. This sort of speculation seems inappropriate for an application Paper and is unnecessary. We propose to delete the following sentence in this paragraph: (...) for example, in some cases customers are more likely to opt for direct models in respect of general insurance than for life or investment products. (...)	We consider the wording in this paragraph quite balanced. The example is for illustration purposes.
Center for Economic Justice	U.S.	It is unclear what guidance is provided by this paragraph, particularly all the text after the first sentence. How do these general musings about insurers crafting distribution strategy help a supervisor?	This paragraph describes the diversity of intermediation markets. Supervisors should take into account this diversity in their approach to intermediary supervision.

- Paragraph 23			
Peter Kochenburger	United States	This is an important discussion, as insurers and intermediaries are marketing and selling products through a growing number of channels. For example, simply by looking at State Farm's internet homepage, we can observe that it promotes its products through Facebook, Twitter, YouTube, LinkedIn, and Flickr, in addition to television, radio, its agents, and its own website (https://www.statefarm.com .) Regulatory requirements for disclosure, clarity, etc. should apply to all these mediums as relevant, as should the penalties for violations.	The ICPs should be translated into jurisdictional requirements that apply to insurance intermediation regardless of the medium. A potential subject for further work.
- Paragraph 24			
World Federation of Insurance Intermediaries	Belgium	When adapting regulatory and supervisory approaches to new distribution channels we believe that such an adaptation should always be done with respect for the level playing field as to ensure a fair competition with existing distribution channels but more importantly, to ensure that the key regulatory objectives are applied across ALL distribution channels for the protection of ALL consumers." We propose to mention this level playing field in this paragraph, as follows: The rapid growth in digital commerce has contributed to the rapid development of direct online selling of insurance by insurers. It has also led to questions about the adequacy and effectiveness of traditional regulatory and supervisory frameworks, including requirements relating to licensing, disclosure, promotions, marketing and advertising. As new distribution channels develop, supervisors may need to adapt their regulatory and supervisory approaches to deal with new and emerging risks to ensure that consumers are adequately protected. Some supervisors have, for example, considered banning certain types of online activities where they consider that they do not have enough control over them or that there is risk that they could have a detrimental impact on customers. Any adaptation of regulatory and supervisory approaches to deal with new distribution channels should be done with respect for the level playing field as to ensure all key regulatory obligations are applied and observed regardless of distribution channel.	Whilst promoting a level playing field is relevant, the focus should be on mitigating risks to consumers (ie a risk-based approach). Propose to not to include here, but could be considered in potential future work.
Insurance Europe	EU	We would question the usefulness of supervisors banning certain types of online activities where they consider that they do not have enough control over them, as many online activities are accessible across borders without being subject to the direct control of the host country. In the European Union, online providers may benefit from the rules on freedom to provide services in order to operate in member states other than the one in which they are established.	Deleted reference to "control".
Center for Economic Justice	U.S.	This paragraph identifies an important issue but provides only generic, non-substantive comments. What are examples of the problems related to intermediaries resulting from digital commerce? What are examples of the responses to these problems? More attention should be devoted to this topic in other parts of the paper - how do supervisory oversight tools vary for different distribution channels?	This may be explored in future work, but too bid a topic for this paper.
- Paragraph 25			

PCI	international	We strongly support inclusion of this paragraph. Consumer protection includes not just restriction but also the ability to innovate to provide new products and more customer friendly services.	Noted
Dutch Association of Insurers	Netherlands	We agree that regulation and supervision should not impede appropriate innovation, competition or easy access, efficiency and convenience that technological advancements offer. Regulations should be technology neutral. The same standards must apply regardless of which innovative technology is or is not deployed. However the implementation of the standard can differ. Supervision should encourage innovation towards automated guidance, automated advice models / robo-advice. These tech driven innovations can be exploited to drive down the costs of advice and making it affordable for all consumers. We suggest to add the use of regulatory sandboxes. A regulatory sandbox is very useful to enhance innovation. In our jurisdiction the regulator introduced an InnovationHub.	This may be covered in future work.
Center for Economic Justice	U.S.	Like paragraph 24, this paragraph provides generic, non-substantive comment or assertion without any evidence or example. What examples are there of supervisors impeding "appropriate innovation, competition or ease of access, efficiency and convenience?" This paragraph should be deleted as the "guidance" is self-evident.	The para provides counterbalance to 24. Propose to leave.
- Paragraph 28			
Global Federation of Insurance Associations	Global	Para 28. We recommend the addition of a sentence along the following lines: "Some jurisdictions may have conflicts between different levels of government, not all of which may be subject to the ICPs."	It is the jurisdiction as a whole that is supposed to implement the ICPs. Propose to leave.
- Paragraph 30			
World Federation of Insurance Intermediaries	Belgium	Although it is mentioned, we would like to see a stronger recognition of the need to recognize customer sophistication when determining the appropriate level of supervision. In Australia for example, the focus of most regulatory requirements are domestic insurance policies for individuals. This is where the greatest level of consumer protection is thought to be needed. Where the clients are medium and large commercial businesses, it is assumed the client has the capacity to assess the nature of advice and services it is receiving, with proportionally less regulatory oversight as a result.	We consider this point adequately reflected in para 30.
Global Federation of Insurance Associations	Global	Para 30-32 notes that jurisdictions should consider the principles of proportionality, "driven by the consumer protection objective", and flexibility, in their supervisory frameworks for intermediaries, so that the nature of scale and different business models is considered, and that there are not unreasonable barriers to entry. In particular, paragraph 32 notes that proportionality be considered when new requirements are introduced so that customers' access to products and services isn't impaired. We agree with these principles and will refer back to them in other sections of the paper	Noted.

		where, we believe, there is an intention of applying the principles of proportionality and flexibility, but where it is less clear.	
PCI	international	These paragraphs emphasize the importance of proportionality. We strongly support the inclusion of these paragraphs as essential to assuring continued competition and choice, which is a form of consumer protection.	Noted.
Dutch Association of Insurers	Netherlands	We agree that the supervisory framework for intermediaries should consider issues of proportionality and flexibility. Licensing and supervisory requirements should not impose unreasonably barriers. The principle of proportionality should also be applicable to small insurers. During the IAIS presentation for Insurance Europe on 7 July 2016 IAIS confirmed this is the case.	Noted.
Center for Economic Justice	U.S.	Paragraphs 30 to 32 discuss proportionality in broad generic terms, but different supervisors reading these paragraphs can and would interpret the platitudes differently. What are examples of situations requiring proportional supervision of intermediaries and the proportional responses?	More in-depth consideration of proportionality in intermediary supervision could potentially form future work.
Peter Kochenburger	United States	Supervisory proportionality is obviously a relevant issue. At the same time, however, consumer protection concerns are usually greatest with individual or small-business customers, who often utilize the services of small local or neighborhood insurance intermediaries, who in turn may be most prone to errors or misconduct. [Note below] ICPs 18.0.7 and 18.2.8, for example, reflect this issue. In contrast, larger or more sophisticated commercial customers have access to larger commercial intermediaries and less need for substantive supervisory protection. Market competition may be significantly more effective in regulating large commercial intermediaries than in personal lines and small business markets. Note: Or, where the customer is less likely to shop around for independent intermediaries, understand the products offered, and less able to bear or shift the financial consequences of intermediary error.	Example added.
- Paragraph 31			
World Federation of Insurance Intermediaries	Belgium	The Paper discusses the need to balance licensing requirements in a manner that does not impose unreasonable barriers to entry for small or emerging intermediaries. While we agree in principle with this sort of balancing, the Paper makes clear there is a need for certain minimum requirements in order to ensure that all intermediaries are competent and knowledgeable and that consumers are protected. Regardless of the possible good intentions, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. We propose to add to paragraph 46 the following sentence: (...) As discussed in section 2.3, traditional regulatory and supervisory frameworks may need to adapt to the changing models for insurance distribution, including its	Wording strengthened in 31.

		licensing. However, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. (...)	
PCI	international	These paragraphs emphasize the importance of proportionality. We strongly support the inclusion of these paragraphs as essential to assuring continued competition and choice, which is a form of consumer protection.	Noted.
- Paragraph 32			
World Federation of Insurance Intermediaries	Belgium	The Paper discusses the need to balance licensing requirements in a manner that does not impose unreasonable barriers to entry for small or emerging intermediaries. While we agree in principle with this sort of balancing, the Paper makes clear there is a need for certain minimum requirements in order to ensure that all intermediaries are competent and knowledgeable and that consumers are protected. Regardless of the possible good intentions, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. We propose to add to paragraph 46 the following sentence: (...) As discussed in section 2.3, traditional regulatory and supervisory frameworks may need to adapt to the changing models for insurance distribution, including its licensing. However, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. (...)	Wording strengthened in 31.
PCI	international	These paragraphs emphasize the importance of proportionality. We strongly support the inclusion of these paragraphs as essential to assuring continued competition and choice, which is a form of consumer protection.	Noted.
- Paragraph 33			
Center for Economic Justice	U.S.	What is an example of accommodating the difference between brokers and agents? Is it simply as discussed in paragraphs 34-35? If so, paragraphs 33-35 should not be distinguished with the two headings.	As discussed further in 34-35, and also relevant elsewhere eg conflicts of interest.
- Paragraph 34			
Dutch Association of Insurers	Netherlands	We agree that, whereas brokers acting (primarily) on behalf of the customer, the insurer is not responsible for (the conduct of) the broker or independent intermediary.	Noted.
- Paragraph 35			

Insurance Europe	EU	We would suggest clarifying the scope of the intermediary responsibility and the fact that they remain responsible for their own conduct/obligations even where undertakings retain certain responsibilities or control certain duties (eg product oversight obligations). Furthermore, insurance undertakings should not be required to supervise or be held responsible for the actions of independent intermediaries that are acting in the interest of the consumer and on which undertakings do not have any influence.	We believe the intention of this para is adequately explained in the second sentence.
Global Federation of Insurance Associations	Global	Para 35 discusses insurer responsibility for intermediary conduct, including product training and accreditation of the intermediary and appears to endorse a shift to greater insurer responsibility. In many jurisdictions, intermediaries are regulated entities in their own right and have specific accountabilities that should not be diluted. While we appreciate that the paragraph states that "this shift is not about undermining the intermediary's responsibility for its own conduct", we wonder if that could be reinforced by wording along the lines of "even where there is shared responsibility between intermediary and insurer, this does not dilute the intermediary's obligations".	Added reference to "dilution".
- Paragraph 37			
Center for Economic Justice	U.S.	The example used for the U.S. discusses differences in licensing businesses versus individuals as intermediaries. Given the topic of paragraphs 37 - 39, it would seem more relevant to discuss the U.S. approach to greatly reduced licensing and educational requirements for certain insurance products - limited lines licenses for credit insurance, travel insurance, and numerous other products. In paragraph 39 on risk-based supervision, It would be useful to note that these limited licenses are generally associated with insurance sales as auxiliary to another product sale - such as a loan, an airline ticket, a rental car, for example - and that these are precisely the types of product markets for which conflict of interest issues are most severe. There is very limited discussion of this issue in paragraph 44, but the discussion of limited lines licenses is appropriate in paragraphs 37-39.	Example from Australia added.
- Paragraph 38			
Global Federation of Insurance Associations	Global	There is an example box following para 38. For the sake of clarity and accuracy, we would recommend that it be expanded as follows: Example: United States Insurance intermediaries are categorized as business entities or individuals, and insurance intermediary licenses are issued for the following lines of business: Variable Life/Variable Annuity; Life Accident & Health; Property; Casualty; and Personal Lines. The licensing by lines of business ensures a minimum level of knowledge for a particular type of insurance product. With respect to variable products of life insurers that have an investment-related element, intermediaries must comply with State and Federal laws and rules that promote customer trust and protect consumers' interests in the insurance distribution system and a strong, competitive	Too detailed, propose to leave.

		marketplace. These laws and rules also protect consumer interests by combatting fraud and money laundering/terrorist financing. They extend from product development to advertising to sale. With State-level supervision of variable products, each State has a comprehensive set of laws and regulations to protect consumers and the safety and soundness of life insurers. These laws and regulations include, but are not limited to, company and agent licensing requirements, rules for the suitability of individual sales, market conduct and financial examinations, as well as product approval procedures that companies and agents must follow. Consumers must be given a buyer's guide developed by the National Association of Insurance Commissioners, a standard setting body of state insurance regulators. The buyer's guide includes basic information, written in plain language, that consumers should understand about variable products such as how money is invested, fees, and benefits. Variable products of life insurers and their sale are also subject to consumer protection regulation at the Federal level. Disclosure rules of the Securities and Exchange Commission (SEC) require that consumers receive a prospectus with important information that includes risks and fees. Rules from the Financial Industry Regulatory Authority (FINRA) govern the conduct of variable products salespersons. A variable product can only be sold by a registered representative of a broker-dealer that is a member of FINRA. The representative must also be licensed by the State to sell variable products. The SEC and FINRA have rules that strictly govern the activity of variable products salespersons, and impose detailed standards concerning advertising, supervision, and suitability of individual sales. Variable product advertising must be pre-approved by FINRA.	
- Paragraph 41			
Insurance Europe	EU	With regard to determining licensing categories, we wonder if such a distinction should be made not only between brokers and agents, but also within the different categories of agents. Requirements for agents that are tied exclusively to one insurance undertaking (or to an additional one under the permission of the first one) should not be the same as tied agents that are linked to a number of different undertakings. In order to guarantee transparency towards customers, licensing and requirements for registering should be adaptable.	We consider this covered under "nature of the intermediary". This para is not at all prescriptive.
- Paragraph 44			
World Federation of Insurance Intermediaries	Belgium	We are concerned with the suggestion that entities who sell insurance coverage on an ancillary basis should be exempt from all supervisor oversight. As we are in favor of an activity based approach to regulation and supervision and in the interest of a watertight consumer protection regime, we believe that all (new) forms of distribution, in accordance with the philosophy of the ICPs, should be subject	Noted.

		to supervisor jurisdiction and appropriate regulatory oversight. We firmly believe in a level playing field approach. If insurance intermediaries are required to have minimum levels of education and qualifications, others involved in the sale and distribution of insurance products should be required to have similar levels of education and qualifications. In other words, the licensing requirements should apply on a consistent basis regardless of the distribution channel being used. Ancillary products are not always in the best interests of consumers and may be duplicative of insurance coverage that consumers already have in place. The application Paper seems to focus on whether these providers should be licensed as intermediaries or exempt from oversight altogether. We believe the document, in line with the ICPs, should cover all lines of distribution. We propose the following changes in Paragraph 44 and an addition to Paragraph 45: 44. Some jurisdictions may require intermediaries acting on an ancillary basis to be licensed <u>in the same manner as intermediaries</u>, while others may <u>establish an alternative licensing framework for these entities or exempt them from this obligation (possibly subject to conditions)</u>. Advantages of licensing such businesses in some form include enabling a better understanding of the market for ancillary insurance business, and the supervisor to establish minimum requirements. Disadvantages include potential supervisory conflicts, where the main business activity is subject to different supervisory requirements (e.g. telephone companies, travel agents), expanding supervisory reach to non-core market players, and the related increase in the supervisor's resource requirements. 45. Some jurisdictions have, in defined and limited instances, established an alternative licensing and regulatory framework for individuals and businesses that only sell insurance on an ancillary basis. Such action can take into account the narrow and unique nature of such coverages while also protecting consumers and incorporating appropriate safeguards. Supervisors considering such framework can consider: - Requiring consumer disclosures that summarize the nature of the coverage provided and the identity of the insurer; state that the coverage may duplicate existing insurance coverage maintained by the purchaser; and make clear that the purchase of coverage is not required in order to complete the underlying transaction. - Requiring appropriate training programs for employees who sell such ancillary coverage, including basic instruction concerning the types of coverages provided and ethical sales practices. - Requiring clear evidence of coverage and the cost of coverage to be provided to the purchaser. - Prohibiting such licensees from holding themselves out as licensed insurers, licensed intermediaries, or insurance experts. - Defining with clarity and specificity the types of coverages that may be offered under this type of framework.	Para redrafted and 44-45 merged. The first part of this suggestion has been incorporated in para 44.
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Center for Economic Justice	U.S.	This paragraph presents false equivalence and non-substantive comments. "Advantages of licensing such business include enabling a better understanding of the market for ancillary insurance business" suggests that absent licensing intermediaries, a supervisor might not understand particular insurance product markets. It is through understanding those markets that policymakers and supervisors understand the need for supervision of intermediaries. The false equivalent disadvantage - supervisory conflicts - is mis-described. The disadvantages - different supervisory requirements, supervisory reach to "non-core" players and "increase in resource requirements" - are without merit. The guidance that should be provided regarding supervisory conflicts is how to coordinate supervision in a market where multiple supervisors are engaged - for example, in the U.S. on credit-related insurance where federal regulators supervise mortgage lending while state insurance regulators supervise sellers and products of credit insurance sold during the same mortgage transaction.	See redrafting of 44-45.
- Paragraph 45			
World Federation of Insurance Intermediaries	Belgium	We are concerned with the suggestion that entities who sell insurance coverage on an ancillary basis should be exempt from all supervisor oversight. As we are in favor of an activity based approach to regulation and supervision and in the interest of a watertight consumer protection regime, we believe that all (new) forms of distribution, in accordance with the philosophy of the ICPs, should be subject to supervisor jurisdiction and appropriate regulatory oversight. We firmly believe in a level playing field approach. If insurance intermediaries are required to have minimum levels of education and qualifications, others involved in the sale and distribution of insurance products should be required to have similar levels of education and qualifications. In other words, the licensing requirements should apply on a consistent basis regardless of the distribution channel being used. Ancillary products are not always in the best interests of consumers and may be duplicative of insurance coverage that consumers already have in place. The application Paper seems to focus on whether these providers should be licensed as intermediaries or exempt from oversight altogether. We believe the document, in line with the ICPs, should cover all lines of distribution. We propose the following changes in Paragraph 44 and an addition to Paragraph 45: 44. Some jurisdictions may require intermediaries acting on an ancillary basis to be licensed in the same manner as intermediaries, while others may establish an alternative licensing framework for these entities or exempt them from this obligation (possibly subject to conditions). Advantages of licensing such businesses in some form include enabling a better understanding of the market for ancillary insurance business, and the supervisor to establish minimum requirements. Disadvantages include potential supervisory conflicts, where the main business activity is subject to different supervisory requirements (e.g. telephone companies, travel agents), expanding supervisory reach to non-core market players, and the related increase in the supervisor's resource requirements.	See comments to 44 above.

		45. Some jurisdictions have, in defined and limited instances, established an alternative licensing and regulatory framework for individuals and businesses that only sell insurance on an ancillary basis. Such action can take into account the narrow and unique nature of such coverages while also protecting consumers and incorporating appropriate safeguards. Supervisors considering such framework can consider: - Requiring consumer disclosures that summarize the nature of the coverage provided and the identity of the insurer; state that the coverage may duplicate existing insurance coverage maintained by the purchaser; and make clear that the purchase of coverage is not required in order to complete the underlying transaction. - Requiring appropriate training programs for employees who sell such ancillary coverage, including basic instruction concerning the types of coverages provided and ethical sales practices. - Requiring clear evidence of coverage and the cost of coverage to be provided to the purchaser. - Prohibiting such licensees from holding themselves out as licensed insurers, licensed intermediaries, or insurance experts. - Defining with clarity and specificity the types of coverages that may be offered under this type of framework.	
Global Federation of Insurance Associations	Global	Para 45. This new paragraph, which notes that some jurisdictions have established narrower licensing frameworks for specific situations, such as where insurance is sold on an ancillary basis, is a good example of applying the principle of proportionality while also supporting basic consumer protection objectives.	Noted.
National Association of Insurance Commissioners	USA	Last sentence, rather than "action" suggest a better wording would be: "Such an approach should take into account..."	Accepted.
- Paragraph 46			
World Federation of Insurance Intermediaries	Belgium	The Paper discusses the need to balance licensing requirements in a manner that does not impose unreasonable barriers to entry for small or emerging intermediaries. While we agree in principle with this sort of balancing, the Paper makes clear there is a need for certain minimum requirements in order to ensure that all intermediaries are competent and knowledgeable and that consumers are protected. Regardless of the possible good intentions, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. We propose to add to paragraph 46 the following sentence: (...) As discussed in section 2.3, traditional regulatory and supervisory frameworks may need to adapt to the changing models for insurance distribution, including its	The proposed language does not fit well within 46. See proposed language added to 31.

		licensing. However, consumer protection should never be jeopardized or undermined, and the whittling down of intermediary qualification requirements should be approached with extreme care and consideration. (...)	
- Paragraph 48			
Center for Economic Justice	U.S.	Paragraphs 48 to 52 discuss supervisory reporting. The paragraphs should distinguish between reporting on intermediary compliance with process requirements (compliance reports) versus intermediary or insurer reporting of market outcomes associated with intermediaries (sales, complaints, cancellations). We suggest the paper stress that, while sound policies and procedures are expected to lead to favorable market outcomes for consumers, such outcomes are not guaranteed and supervisors need to monitor market outcomes to determine whether the policies and procedures employed are, in fact, effective.	Language added to para 47.
- Paragraph 53			
Peter Kochenburger	United States	In some jurisdictions, such as the United States, disputes between customers and intermediaries sometimes involving insurers as well) often result in litigation between the parties. We suggest that in these jurisdictions intermediaries also be required to report litigation involving their customers.	Included in new para 53.
- Paragraph 55			
World Federation of Insurance Intermediaries	Belgium	We believe that disputes between intermediaries and insurers should be considered as an issue between business partners. We propose to delete this paragraph.	We consider the point valid, as such disputes could indicate conduct issues.
- Paragraph 56			
Center for Economic Justice	U.S.	Paragraphs 56-59 discuss other sources of information for a supervisor regarding supervision of intermediaries. Emphasis should be made for granular data on sales reported by insurers with information on intermediary participation and/or sales data by intermediaries. For example, analysis of retirement income product sales would show if a particular intermediary were selling, for example, variable annuities with high fees and surrender charges to elderly consumers for whom the product is inappropriate. Or analysis of credit insurance sales data would show if a particular lender had a 99% penetration rate compared to an industry average of 10%. Another example is obtaining sales and quote data from an online auto insurance aggregator to determine whether the aggregator is systematically channeling consumers to the insurer from whom the aggregator receives the greatest compensation.	Reference to thematic review now introduced at para 59 and the sub-heading.
- Paragraph 62			

World Federation of Insurance Intermediaries	Belgium	Section 3.5 on indirect supervision is an area where we believe extreme caution is needed. Unless roles are clear it is a recipe for confusion. We wonder whether the examples provided are indeed cases of indirect supervision (as defined in ICP 18.2.9). The United States, for example, is not a country that relies on indirect supervision, and the references to its system are likely to create confusion.	The US example is of due diligence conducted by the insurer, so is limited in scope.
Peter Kochenburger	United States	If insurers are held responsible for the conduct of intermediaries (see Draft paragraph 35), this type of indirect supervision can be both effective and efficient. As noted, insurers are best situated to monitor conduct of the intermediaries they work with, enforce compliance with supervisory and company standards, and calculate and spread the financial consequences of intermediary error/malfeasance.	Noted.
- Paragraph 65			
PCI	international	In the first sentence, we urge the addition of "provided that they operate transparently and without discrimination between domestic and foreign players." We are asking for this addition because some SROs in the past have operated so as to provide advantages to domestic players over foreign players.	Leave
Center for Economic Justice	U.S.	Paragraphs 65 to 67 discuss self-regulatory organizations as one approach to oversight of intermediaries. This section should include description and discussion of how the SROs are accountable to supervisors and to the public. The paragraphs should be explicit about the safeguards needed if supervisors rely to any extent on SROs for ensuring intermediary compliance with legal requirements.	Additional sentence added to 67.
Peter Kochenburger	United States	If utilized or recognized by supervisors, these standards should be publicly available and accessible for customer review.	Additional sentence in 67.
- Paragraph 68			
National Association of Insurance Commissioners	USA	Given the long list of examples in the second sentence, it may be more reader friendly to make this a bullet list.	Accepted.
- Paragraph 69			
PCI	international	We strongly support inclusion of this paragraph on proportional supervisory action.	Noted.

Peter Kochenburger	United States	This paragraph should also include supervisory authority to order restitution to customers harmed by intermediary conduct, particularly in jurisdictions where or when the insurer may not be legally responsible for intermediaries' misconduct when selling their products.	Added reference to redress.
- Paragraph 71			
National Association of Insurance Commissioners	USA	Second sentence, it is unclear what "over and above legal and regulatory knowledge" means given the rest of the sentence. Suggest deleting.	Intended to highlight that both legal/regulatory knowledge <u>and</u> insurance industry knowledge are needed. See suggested reordering.
- Paragraph 72			
PCI	international	This and other paragraphs refer to fair treatment. It is our view that fairness in the insurance context is determined by law. To imply it is something else would be to give supervisors extra-legal authority. For this reason, we believe that in the first sentence, "fairly" should be replaced with "according to applicable law."	Disagree. The wording is consistent with ICP 19.
- Paragraph 73			
Center for Economic Justice	U.S.	Another objective should be included: Ensuring sale of products meeting consumers' needs and avoiding sales of products harmful to consumers	Added
- Paragraph 77			
National Association of Insurance Commissioners	USA	In the penultimate sentence, delete "who are employed to" as it is redundant.	Deleted
- Paragraph 78			
World Federation of Insurance Intermediaries	Belgium	The level of detail described in paragraphs 78 to 82 on training and competence is in our view too detailed and should be more high level.	The content is largely examples.
- Paragraph 79			

Center for Economic Justice	U.S.	Paragraph 79 seeks to expand on paragraph 78. Setting standards with regard to professional knowledge and experience seeks to achieve a minimum level of competence. Paragraph 79 discusses methods of demonstrating competence and lists 5 options in no particular order. The paragraph should emphasize that the principal standard for demonstrating competence is through testing or other specific demonstration of the intermediary's understanding of the products being sold and the duties and responsibilities of the intermediary in selling those products. The other methods listed are ways to prepare for the required competency. For example, it is unclear how a university degree in art history provides insight into whether an intermediary understands a variable annuity or the responsibilities for the sale of such a product.	Some of the challenges are included in para 83. See minor addition to 82.
- Paragraph 81			
World Federation of Insurance Intermediaries	Belgium	We believe the word THAT in the first sentence should be replaced by they: Intermediaries should also keep their knowledge up to date and stay aware of changes in the market segment they serve (...)	Amended
- Paragraph 86			
World Federation of Insurance Intermediaries	Belgium	We suggest to add here that background checks on employees or representatives should take place in accordance with privacy legislation applicable in the jurisdiction of the intermediary. We propose the following sentence: Supervisors may specify that intermediaries have in place systems and procedures to carry out background checks, in accordance with privacy legislation applicable in their jurisdiction, on their employees or representatives, both at the entry stage and for ongoing requirements. Supervisors may verify through the supervisory process that intermediaries follow these systems and procedures, and review them regularly to keep them up to date.	Considered unnecessary - we expect insurance supervisors to operate within the law.
- Paragraph 89			
Peter Kochenburger	United States	These standards can also be an effective tool to assist intermediaries. As noted in 3.5.2 (above), if supervisory authorities acknowledge these standards as relevant, they should be publicly and readily available for customer review.	See addition to 67.
- Paragraph 94			
Center for Economic Justice	U.S.	Paragraphs 94 to 96 asserts that corporate governance is a fundamental element in achieving fair customer outcomes and "that the supervisor will need to be satisfied that a minimum standard of governance is achieved and that there are no unacceptable risks. The overriding objective should be that consumers are appropriately protected." The premise of these paragraphs is that good process -	Proposed edits to 97 to address first point. Market monitoring is discussed in 59. Regarding poor corporate governance, we consider that this

		good corporate governance - will lead to good consumer outcomes. We suggest that the paragraph make explicit three points - good process/governance may be a requirement for good consumer outcomes, but is not a guaranty of good consumer outcomes. Review of corporate governance is not a substitute for monitoring market outcomes for consumers. Supervisory involvement in corporate governance should be limited to situations where poor consumer outcomes indicate poor corporate governance as a cause.	could lead to poor consumer outcomes and hence should be addressed before indications of poor consumer outcomes arise.
- Paragraph 96			
PCI	international	We strongly support inclusion of this paragraph on proportionality with regard to corporate governance and control functions.	Noted
- Paragraph 104			
World Federation of Insurance Intermediaries	Belgium	We propose to delete paragraph 104 as it is not a related to an ICP standard or guideline. This paragraph gives the impression of a new requirement in addition to the ones described in ICPs 18 or 19. If otherwise, please mention in a footnote the related ICP.	ICP 18.4.1 mentions “sound and prudent management of the business”. This requires some degree of risk management.
- Paragraph 105			
Peter Kochenburger	United States	Perhaps tie to specific sections in the IAIS Issues Paper on Cyber Risk to the Insurance Sector (once finalized).	Leave, as data protection is broader than cyber risk.
- Paragraph 109			
Center for Economic Justice	U.S.	Paragraphs 109 references the Issues paper on Conduct of Business Risk, but not the Application Paper on Conduct of Business Supervision. The latter includes discussion of supervision of conflict of interest issues.	See section 3.2 (paras 68-75) of the Issues Paper on Conduct of Business Risk. Intermediaries are not within the scope of the COB Application Paper.
Peter Kochenburger	United States	Intermediary potential or actual conflicts of interests with their customers in the advice and sale of insurance products is a major consumer protection issue. These conflicts have been well documented in the United States and often result from compensation arrangements that fail to align the interest of the intermediary with that of the consumer. Examples include compensation agreements between insurers and lenders in the sale of credit insurance and force-placed insurance (e.g., insurance related to home mortgages), the use of contingent commissions among major commercial intermediaries and insurers (as initiated in 2004 by then New York Attorney General Elliot Spitzer), and the sale of investment and retirement products. [Note]	The paper provides some examples of supervisory approaches to manage conflicts of interest. We believe the paper largely addresses points raised here. Also, an example added.

		This area would benefit from additional review, with an emphasis on assisting supervisors to identify and address such harmful conflicts of interest. The paper could expand its discussion of the types of compensation schemes that create conflicts of interest, reference supervisory tools that prohibit structures that lead to conflicts, and encourage compensation structures that align the interests of intermediaries and consumers. Existing supervisory structures may not address this adequately, and issues can include: (1) lack of regulatory requirements regarding the existence and timing of compensation disclosures to customers, (2) over-reliance on disclosure as a supervisory tool, particularly in the consumer marketplace, and (3) appropriateness of substantively regulating intermediary compensation where market competition appears inadequate. Required disclosures should undergo consumer testing in advance to increase the likelihood that the supervisory goals of such disclosure have been or are being met. The European Union's Insurance Distribution Directive may provide a useful international model and E.U. evaluations of its efficacy should be helpful. As Draft paragraph 120 and footnote 39 discuss, disclosure alone is often not a sufficient supervisory tool, particularly when there is good evidence that the target audience is unlikely to read (or understand) the disclosures, as well as when market competition by itself may not result in lower customer costs. This concern is also referenced in paragraphs 162-163 (also see ICP 18.5.17). Note: We can provide additional detail on each of these examples if requested.	
- Paragraph 111			
Center for Economic Justice	U.S.	Paragraphs 111 and 112 seem out of place and more relevant in later sections of the paper discussing supervisory approaches as opposed to the general overview of conflicts of interest issues in paragraphs 109, 110 and 113	Para 111 is already included in ICP 18.1.5 – so now deleted. Reorder of 112 and 113.
- Paragraph 114			
Center for Economic Justice	U.S.	Paragraphs 114 to 116 discuss "managing conflicts of interest through procedures." Again, procedures are not a substitute for or guaranty of good consumer outcomes. In addition, this section needs more description of what it means to "manage" a conflict of interest - as opposed to eliminating the conflict - and what specific activities are used for such "management." The discussion of the EU is generic - what are "arrangements to prevent conflicts of interest from adversely affecting the interests of their customers" and what does it mean for such arrangements to be insufficient to prevent damage? The South Africa example identifies a more specific set of supervisory activities, but some of these activities could be described in more detail - what types of prohibitions are employed for conflicted remuneration, practices and business models? The examples might also include the new Department of Labor rule in the U.S. which changes the standard of care for advice on some retirement income products from a suitability standard to a fiduciary standard to specifically address the consumer harms of conflicted advice.	Example from Australia added.

- Paragraph 115			
Dutch Association of Insurers	Netherlands	We propose to add that in the European jurisdiction the Insurance Distribution Directive (EU 2016/97) contains a Member State option ban commissions. Member States may for insurance based investment products additionally prohibit or further restrict the offer or acceptance of fees, commissions or non- monetary benefits from third parties in relation to the provision of insurance advice (article 29(3)). Also with respect to non-life Member States may limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non- monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products (article 22 (3)).	Agreed to leave the example from the IDD as drafted, as it already quite detailed.
- Paragraph 117			
Center for Economic Justice	U.S.	Paragraphs 117 to 120 discuss managing conflicts of interest through disclosure. Paragraph 117 states: "One way of managing conflicts of interest is through appropriate disclosure." This statement is woefully inadequate, at best. There is little, if any evidence, that disclosure empowers consumers sufficiently to overcome bad advice or sales resulting from a conflict of interest. Further, even in situations where disclosure might empower consumers sufficiently to more level market power of consumers and intermediaries/insurers, the disclosure must be developed and crafted and tested to ensure effectiveness. The paper should not be suggesting to supervisors that simply requiring information to consumers will address structural problems in markets. Yet, that is the thrust of paragraph 117. The caveat in paragraph 120 should be moved up front and paragraph 117 changed to: In some situations, well-crafted and consumer-tested disclosure may help empower consumers in situations where the intermediary has a conflict of interest. However, managing conflicts of interest through disclosure has limitations . . .	The language in 119 has been strengthened.
- Paragraph 118			
Global Federation of Insurance Associations	Global	Para 118 outlines information that an intermediary should disclose to the customer before entering into a contract, and includes "basis of remuneration". There is no differentiation between different types of intermediaries and situations. ICP 18.5 requires such information "where a potential conflict of interest exists". ICP 19.7.1 states that where intermediaries who represent the interest of customers receive inducements from insurers, this could result in a conflict of interest. Depending upon the nature of the intermediary structure and compensation system (e.g., salaried employee, career agent), possible conflicts may not arise. Thus, we would suggest that paragraph 118 add that where intermediaries who represent the interests of customers receive inducements from insurers, they should disclose the basis of remuneration.	Implicitly included through the footnote ref to 18.5.18, but now added explicitly.
National Association of	USA	First sentence, as this sentence uses "should" and "including" it needs to be consistent with the standard in 18.5; otherwise this guidance goes beyond the standard. Either the list should begin with "such as" rather than "including" (similar to 18.5.4) or the end of the sentence should read, "and	Amended to "such as".

Insurance Commissioners		basis of remuneration where a potential conflict of interest exists" with the footnote revised to "See ICP 18.5."	
- Paragraph 119			
Global Federation of Insurance Associations	Global	Para 119 discusses disclosure of information on the product charging structure, particularly with respect to investment-related products. We believe that any such disclosure should be brief and clear and focus on understandability. This reinforces that disclosure for the sake of disclosure is not necessarily in the best interests of customers and it aligns with paragraph 159 that states that disclosure shouldn't be unnecessarily long and detailed. Para 119 states that "fees and costs can undermine some insurance products' return". We agree that fees and costs reduce the total funds that are invested, but believe that more neutral language could be used. "Undermine" implies subversion or stealth. Why not say simply: "fees and costs can reduce the total funds that are invested and thus affect the return on investments".	Accepted.
- Paragraph 120			
World Federation of Insurance Intermediaries	Belgium	In order to eliminate the subjective and speculative nature of this paragraph, we recommend the deletion of the first two sentences in this paragraph. This would leave the last sentence in place.	The comments are supported by research.
Peter Kochenburger	United States	[As stated earlier] As Draft paragraph 120 and footnote 39 discuss, disclosure alone is often not a sufficient supervisory tool, particularly when there is good evidence that the target audience is unlikely to read (or understand) the disclosures, as well as when market competition by itself may not result in lower customer costs. This concern is also referenced in paragraphs 162-163 (also see ICP 18.5.17).	Noted
- Paragraph 121			
PCI	international	There should be language added that: "Many jurisdictions have not adopted all or any of these restrictions on remuneration."	This section discusses examples of approaches taken in some jurisdictions.
- Paragraph 122			
PCI	international	There should be language added that: "Many jurisdictions have not adopted all or any of these restrictions on remuneration."	This section discusses examples of approaches taken in some jurisdictions.

- Paragraph 123			
PCI	international	There should be language added that: "Many jurisdictions have not adopted all or any of these restrictions on remuneration."	This section discusses examples of approaches taken in some jurisdictions.
- Paragraph 124			
Insurance Europe	EU	In the European Union, the rules on conflicts of interest under the Insurance Distribution Directive (IDD) require intermediaries to always act in accordance with the best interests of their customers and to ensure that any contract proposed is consistent with the customer's demands and needs. These obligations apply irrespective of the timing of the payment of remuneration. The paragraph also fails to acknowledge that intermediaries are dependent on ensuring a successful long-term relationship with their clients, which is not determined by the timing of remuneration payment.	Noted. We consider that the timing of remuneration can sometimes indeed influence an intermediary's commitment to the relationship.
Global Federation of Insurance Associations	Global	Para 124 suggests postponing or staggering remuneration payments as a means of managing conflicts of interest. We would point out that supervisors and industry have available to them a wide range of tools to align intermediary and customer interests, including codes of conduct that apply regardless of the timing of remuneration payments and charge-back policies where the intermediary repays a proportionate part of his commission if the customer does not retain the product for a certain period of time.	Charge-back added to the examples in 129.
PCI	international	There should be language added that: "Many jurisdictions have not adopted all or any of these restrictions on remuneration."	This section discusses examples of approaches taken in some jurisdictions.
- Paragraph 125			
PCI	international	There should be language added that: "Many jurisdictions have not adopted all or any of these restrictions on remuneration."	This section discusses examples of approaches taken in some jurisdictions.
- Paragraph 129			
Global Federation of Insurance Associations	Global	Para 129. We appreciate the addition of this para that suggests that supervisors need to be aware of potential unintended consequences of placing restrictions on remuneration -- like restricting access to advice and other services. As noted in previous papers, insurance is a product that is sold rather than bought and, given the social value of having a well-insured population, a commission-based system is generally supported with appropriate consumer-focused safeguards. Hence, it is very important that supervisory changes are not undertaken lightly.	Noted.

PCI	international	We strongly support inclusion of this paragraph.	Noted
- Paragraph 130			
World Federation of Insurance Intermediaries	Belgium	This paragraph and the box that immediately follows discuss compensation disclosure mandates, and they suggest that the United States requires intermediaries to disclose the details of compensation to consumers. This is inaccurate. No State has enacted Section 18 of the Producer Licensing Model Act, and the references included in the draft misrepresent the actions taken by policymakers in that country. We propose to either delete this example or at a minimum mention that no State has enacted Section 18 of the Producer Licensing Model Act.	As the Act is indeed in place, agreed to leave.
Center for Economic Justice	U.S.	Paragraph 130 discusses disclosure of intermediary compensation, presumably as a means to address consumer harm resulting from an intermediary's conflict of interest. It would be useful for supervisors and consumers to include additional information describing, one, what was the result that supervisors hoped for with the disclosure and, two, did the disclosure succeed?	Cross reference to 120/121 added.
- Paragraph 131			
World Federation of Insurance Intermediaries	Belgium	The discussion of rebating in this paragraph seems out of place, and we are confused by the conversation of the issue here.	These are examples of financial incentives that may involve a conflict.
Center for Economic Justice	U.S.	Paragraph 131 In some lines of business, an intermediary does not market directly to consumers, but to individuals or businesses in a position to refer or steer the consumer. In such markets, the intermediary may be encouraged to pay a referral fee to secure the business. Such referral fees are prohibited in the U.S., for example, for title insurance agents.	Added as an example.
- Paragraph 132			
Center for Economic Justice	U.S.	Paragraph 132 repeats a sentence from ICP 18.5.17 that where conflicts of interest cannot be managed satisfactorily, this would result in the intermediary declining to act, with the addition of insurer or before intermediary. First, it is unclear what "declining to act" means since we have seen numerous examples of insurance sales through intermediaries where the conflict of interest was not managed at all. Second, what is the purpose of simply repeating the sentence from ICP and then referencing that sentence?	Proposed minor amendments to 134 and deletion of footnote.
- Paragraph 133			

Insurance Europe	EU	While we support the need for supervisors to be able to take action against an insurance intermediary where appropriate, we would question the reference to the application of sanctions indirectly through the insurer. In the European Union, the Insurance Distribution Directive (IDD) contains specific rules on sanctions that apply to any insurance distributor (an intermediary or an insurance undertaking) who is in breach of any conduct of business provisions, including conflicts of interest. The wording should avoid seeming to suggest the application of alternative sanction regimes where specific rules already exist.	Wording deleted.
Global Federation of Insurance Associations	Global	Para 133 suggests that supervisors should not only be able to take action against intermediaries where conflicts of interest have not been managed, but also to apply indirect sanctions through the insurer. We would like to stress the importance of clear responsibility of an entity for its actions. Where an intermediary fails to meet standards set by the laws or regulations of that jurisdiction, sanctions should be applied according to those rules. For example, the IDD is offering rules on sanctions for European markets. We would caution against blurring these new rules by application of indirect sanctions outside of the IDD scheme.	As above
- Paragraph 140			
Peter Kochenburger	United States	The supervisory model described in this paragraph best protects customers and accurately and fairly aligns the financial and legal risks with the insurer - the party that can evaluate and spread the risk of financial malfeasance by an intermediary.	Noted.
- Paragraph 141			
World Federation of Insurance Intermediaries	Belgium	This paragraph is related to ICP 18.6.5. where the wording is less stringent (... the supervisor may wish to consider recommending ...). We propose to use the wordings of the ICP and to change this paragraph as follows: In all cases, the supervisor may wish to consider recommending that adequate financial systems and controls should be are maintained and records should be are kept and subject to audit to ensure traceability of client monies. (...)	The suggested wording is now considered too weak
- Paragraph 145			
PCI	international	This is an important paragraph and it should continue to be included. The type of disclosure will vary tremendously based on the product. For example, a complex long term financial product would require more disclosure that buying an auto insurance policy in order to drive a car that has just been purchased.	Noted.
Center for Economic Justice	U.S.	Paragraphs 142 through 151 discuss transparency with customers and disclosure of minimum information by intermediaries about themselves. The paragraphs provide a list of items to be disclosed, but paragraph 145 states: The nature and timing of disclosures may differ according to the	147 highlights that disclosures may differ according to the circumstances but should be sufficient. The main

		circumstances but should be sufficient to inform the customer adequately on their terms of business, their status (i.e. whether they are acting as an agent of broker), and the relationship they have with the insurer(s) whose products they sell. The information provided needs to be suitable, taking into account the nature of the insurance being intermediated. Paragraph 147 then states: The mode of communication should make no difference to the quality of information provided, which should be the same for face-to-face and online distribution channels. Paragraph 148 then states: The supervisor should require that the principles of transparency and disclosure, as set out in ICP 18.5, are applied equally to internet, telephonic and other digital insurance activities, as well as to insurance activities through traditional means. Taken together, it appears that the guidance to supervisors is that all disclosure should be of equal quality and achieve the same outcomes regardless of sales channel or method of communication. We suggest these paragraphs do not provide useful guidance to supervisors. For example, what does it mean to meet the principles of transparency and disclosure for an in-person sale versus an online sale through a web site versus a mobile phone sale through an app? As discussed in earlier comments, disclosure is presented as the swiss army knife of regulatory tools - suited for nearly all market problems - when, despite being relied upon as the principal market conduct supervisor tool, little rigor is applied in the development, implementation and evaluation of disclosures as a regulatory response to market problems.	point of what follows is that the customer should receive sufficient information whatever the mode of sale. See also example added. The increasing use of digital technology may be considered in future work.
- Paragraph 148			
Insurance Europe	EU	We support the point that the principles of transparency and disclosure should be applied equally to all distribution channels. This should also respect the principle of proportionality. We would also welcome recognition that the same principles should equally apply for the possibility for sales without advice across all channels of insurance distribution, in line with relevant national rules.	Dealt with in 150. Adding proportionality here would add confusion. No distinction is made, so not considered necessary.
Global Federation of Insurance Associations	Global	Para 148 states that the principles of transparency and disclosure should be applied equally to all business models (traditional, internet, telephonic, other digital insurance activities). We would suggest that, if the principles of proportionality and flexibility are considered, the elements of disclosure need not be identical.	Dealt with in 150. Adding proportionality here would add confusion.
- Paragraph 152			
Center for Economic Justice	U.S.	Paragraphs 152 to 155 discuss product information and product promotion and imply that an intermediary has responsibility for the product information developed by the insurer. It is unclear why an intermediary would have such responsibility. An intermediary should be responsible for his or her promotional material - discussed in the box "IAIS Members were asked about the requirements regarding advertisements by intermediaries" but which is different from discussion of product	Agreed to leave – reasonable steps would depend upon who is responsible for developing the material.

		information developed by insurers in prior paragraphs. An intermediary should also be responsible for utilizing product information in a manner that is not misleading to the consumer.	
- Paragraph 156			
Center for Economic Justice	U.S.	Paragraphs 156 to 163 discuss timing, delivery and content of policy and product information. Some of the requirements set out are more appropriately established as requirements of the insurer and which would, consequently, become indirect requirements of the intermediary enforced by the insurer. Paragraphs 157, 159, 160, 161 and 162 fall into this category.	Agreed that qualitative characteristics of the information are the responsibility of the insurer. The intermediary's role typically involves responsibility for providing and explaining the information. See addition to 159.
Peter Kochenburger	United States	In addition to meaningful disclosures and descriptions of the insurance product, supervisors could require that intermediaries work with the insurers so that the insurance policies, and all other contractual documents, are available in full to the customer prior to agreement. [Note] As discussed in paragraphs 162 and 163, disclosures by themselves may not achieve supervisory goals. This is a particular concern for consumer customers, or when the products are complex, whether in terms of financial assumptions (e.g., investment-related products) or legal complexity (many of the terms in automobile and homeowners policies). Note: In many, presumably most jurisdictions, an insurance policy is also a contract and basic contract law requires that the parties have at least had access to the contract terms that will bind them in advance of signing.	Noted. Addition to 159 as above.
- Paragraph 157			
Global Federation of Insurance Associations	Global	Paras 157 and 158 discuss the importance of customers receiving information about a policy "in good time", that is "before or at the time of sale". We would recommend a slight rewording to "before or at the time of sale". Otherwise, the interpretation that could be drawn is that all sales would have to be done in a two-stage process, that the customer would first have to receive the information, have time to consider it, then meet again to re-receive the information and complete the sale. While some sales do happen over two or more visits, it is not uncommon for customers to want to move forward with a purchase at the same time that they receive information about the products, and we don't believe that they should be prevented from doing so.	See para 158 and the minor addition of "or".
- Paragraph 158			

Insurance Europe	EU	We would like to suggest that when determining what is "in good time" the wishes of the customer are also taken into consideration. It would be useful to include a reference that the intermediary should consider the preferences of the customer, so as to respect situations where the customer may need or choose to enter into a contract without undue delay.	The current text is based on ICP 19.5.3. See minor addition of "or" (which does not contradict 19.5.3).
- Paragraph 159			
Dutch Association of Insurers	Netherlands	We suggest to refer to the Insurance Distribution Directive (EU 2016/97) as EU Member States will have to introduce an Insurance Product Information Document (article 20(8)). With respect to product disclosure we refer to our Insurance Product Information document https://verzekeringskaarten.nl/cards/allianz/overlijdensrisicoverzekering.html Supervisors should allow for some flexibility regarding the content of the product disclosure document.	Example from IDD added.
- Paragraph 163			
Peter Kochenburger	United States	We recommend that supervisors adopt consumer-testing protocols for all disclosures they require for consumer insurance products, though we recognize that some jurisdictions may not have the financial resources or legal authority to do so.	Language in 165 strengthened.
- Paragraph 164			
World Federation of Insurance Intermediaries	Belgium	Paragraphs 164 to 167. Where the regulatory framework distinguishes between advice, which is relevant to the specific circumstances of the client and his needs and objectives, as opposed to general information about the product, we believe it should be made very clear to the consumer/client whether he is receiving advice relevant to his specific needs and circumstances, or is merely receiving product sales information.	Suggested addition to 168.
Dutch Association of Insurers	Netherlands	In our jurisdiction it is up to the customer to decide whether he/she needs advice or not (advice is not mandatory). Insurers are not responsible for the (quality of) advice given by brokers. The broker is solely responsible for advice.	Noted.
- Paragraph 166			
Dutch Association of Insurers	Netherlands	In relation to the sale of insurance-based investment products where no advice is given (execution only) an assessment of suitability and appropriateness is required. The knowledge and experience of a customer must be considered. The customer must take an exam (developed on the basis of a principle based approach). When the customer fails the exam and it is concluded that a product is not appropriate for a customer given his knowledge and experience, then the customer must be	Agreed to leave.

		warned. After the warning has been given it is up to the customer to decide whether he/she needs advice (or would like to proceed with the execution only sale).	
- Paragraph 178			
Peter Kochenburger	United States	Claim handling is how insurers fulfill their side of the insurance contract. When insurers assign all or part of this responsibility to insurance intermediaries, the same sanctions available against an insurer should be equally available against the intermediary, or the insurer should be held liable for the intermediary's actions. As paragraph 178 concludes, "Care should be taken to make clear the respective responsibilities of the intermediary and insurer in relation to the claims process, and that ultimate accountability for the correctness and fairness of claim outcomes remains with the insurer."	Noted.
- Paragraph 179			
National Association of Insurance Commissioners	USA	This paragraph seems to suggest getting into the details of a complaint process that may go beyond what would be appropriate prior to concluding a contract. Suggest rewording this paragraph to: "Before an insurance contract is concluded, the insurer or intermediary, as relevant, should inform a retail customer of their right to complain - including the process for such complaints, which could be the insurer's internal claims dispute mechanism or an independent dispute resolution mechanism."	Minor wording clarification made, in respect of "dispute resolution"..

List of commentators

	Jurisdiction	Organisation	Role	Name
1	USA	National Association of Insurance Commissioners	IAIS Member	Ryan Workman
2	international	PCI	Other	Dave Snyder
3	Global	Global Federation of Insurance Associations	Other	Oscar Verlinden
4	U.S.	Center for Economic Justice	Other	Birny Birnbaum
5	Belgium	World Federation of Insurance Intermediaries	Other	Isabelle Heuninckx
6	EU	Insurance Europe	Other	Arthur Hilliard
7	Netherlands	Dutch Association of Insurers	Other	Harold Mahadew
8	US	NAPSLO	Other	Keri Kish
9	United States	NAIC Consumer Representatives	Other	Peter Kochenburger