

03 JUNE 2021

Strategy Group
Australian Securities and Investment Commission
GPO Box 9827
Brisbane QLD 4001

c/o Nikki Del Mel

By Email: BR.submissions@asic.gov.au

**RE: CONSULTATION PAPER 340
BREACH REPORTING AND RELATED OBLIGATIONS**

1. EXECUTIVE SUMMARY

This response has been prepared by Melbourne Securities Corporation Ltd ACN 160 326 545 AFSL 428289 trading as MSC Trustees (**MSC Trustees/Us/We**).

MSC Trustees is a professional trustee firm and reporting entity, we support the principals put forward by ASIC in relation to enhancing breach reporting, particularly those that promote a culture of integrity across the industry. In this submission we highlight areas of change that may deter participants from the reporting of breaches rather than promote transparency.

We refer to the consultation on the ASIC guidance note to the breach reporting and related obligations and provide comments to the proposals outlined in the draft Regulatory Guide **RG 78.26** and **Proposal B4** of Consultation Paper 340.

We provide commentary on the proposed Licensee changes to reporting requirements for Australian Financial Services Licensees (Licensees) in the following areas:

- Reporting investigations into breaches which exceed 30 days.
- The additional requirements for Licensees to investigate and report breaches of other Licensee's obligations.
- The requirement for ASIC to publish breach data and potential for this to deter Licensees to report breaches to ASIC.

2. BACKGROUND

MSC Trustees is a professional trustee firm that provides services across a wide range of financial products. Specifically, relevant to this submission, MSC Trustees provides trustee services to retail and wholesale debenture note issuers, Managed Investment Schemes (**MIS**) and is the Responsible Entity for a number of Registered MIS.



Core to the provision of professional trustee services is to provide a level of independence and oversight of product issuers and fund managers to protect the interests of the investors. Compliance with regulatory requirements and the escalation and appropriate management of potential breaches is central to our service offering.

3. SUBMISSION

3.1. Reporting Investigations (Proposal B4)

We are supportive of ASIC's proposal to define investigation periods for breaches of 30 days. Such reports notifying ASIC of a potential breach whilst undertaking an investigation is likely to result in premature decisions around determining if an event is a reportable breach, and in some instances may deter AFS licensees from reporting altogether, particularly where ASIC may make such data publicly available. As such, clear guidance around reporting requirements, including form of reporting and potential action taken by ASIC pending an outcome of the investigation is required.

3.2. Reporting other Licensees (Draft RG 78.26)

We believe ASIC's proposed introduction of reporting other Licensee's breaches place an impractical and unnecessary burden on Licensees. We are of the view that there are already adequate requirements in accordance with the Corporations Act to disclose certain matters to ASIC where breaches are identified in the course of our work.

We provide Trustee services to AFSL and ACL holders. The holders of the AFSL or ACL have an existing obligation to report any breaches and it would be an over extension of our role to also report on breaches that the Licensee is obligated to report to ASIC. In addition, it would not be practicable to hold an investigation into the breach of another Licensee. There is also the risk that there is reporting of incorrect information that may result in a number of commercial risks and therefore potential litigation between License holders.

It is important that a Licensee provides the Trustee with timely information with regards to their business activities in an open and transparent way. The obligation of the trustee being required to investigate a potential breach of another Licensee would not promote the escalation of issues from the Licensee to the Trustee that may or may not be breaches.

The determination of a breach is often subjective and the Licensee is in the best position to assess if an event is a breach and the relative significance of a breach.

MSC Trustees recommend the removal of this proposed requirement and instead rely on the existing provisions in the Corporations Act to raise certain matters to ASIC and utilisation of the existing "tipping off" provisions.

3.3. Publishing Breach Data

The Breach Reporting reforms create a requirement for ASIC to publish breach data annually on their website. It is important to promote a culture of breach reporting across AFS licensees in order to maintain integrity and transparency and we believe the perceived risk having



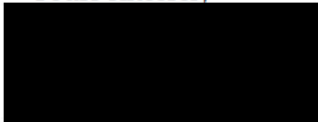
reported breaches publicised will act as a deterrent from reporting. As such, we look to ASIC to clarify the data which will be publicised and recommend omitting specific AFS Licensee details from such publications.

4. Conclusion

The framework for breach reporting is important to ensure that there are adequate risk frameworks established to identify, assess and remediate breaches of regulation. We are supportive of ASICs initiative to enhance the framework, but are concerned that the introduction of public reporting and the initiatives to report other Licensees may deter participants from reporting information to ASIC as the framework intends.

We are happy to provide additional information or discuss this submission further at your request.

Yours sincerely



Shelley Brown
Chief Compliance Officer
MSC Trustees