FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

6 April 2018

Clare McCarthy
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Australian Securities and Investments Commission
GPO Box 9827 Melbourne VIC 3001

Email: policy.submissions@asic.gov.au

Re. Oversight of the Australian Financial Complaints Authority: Update to RG 139

Dear Madam,

We welcome the opportunity to comment on the proposed updating of RG 139. We are broadly supportive of the proposal, and outline our views (including concerns) in our response below.

Responses

B1Q1 Do you agree with our proposed timeframe for AFCA to report serious contraventions or systemic issues? If not, why not?

We support the proposed reporting requirements.

B2Q1 Do you agree with our broad approach to AFCA reporting? If not, why not?

This approach will lead AFCA to report considerably more contraventions than fall within the expected limits of seriousness. This is because of the vagueness of the standard and the costs of consulting with ASIC in hard cases. Nevertheless, we support this approach because a prescriptive approach, while making the reporting obligation more certain, will achieve certainty by using a simplified rule that is likely to exclude some cases that should be reported and that would be reported under the broad standard.

B3Q1 Do you agree with our proposed guidance on the primary role of the independent assessor? If not, why not?

We generally agree with the proposed clarification of the role of the independent assessor. The independent assessor should focus on making recommendations for improving how AFCA deals with complaints in the future.

The independent assessor should respond to complaints about complaints already made by:

- seeking clarification from AFCA to pass onto complainants
- advising complainants of alternative avenues for redress
- investigating and making recommendations about how AFCA should deal with such complaints in the future.

B4Q1 Do you agree with our proposed guidance on what is outside the role of the independent assessor? If not, why not?

We agree that the independent assessor should not be reviewing, or directing AFCA to reconsider, cases. A balance needs to be struck between the speed with which a final decision and outcome are achieved, and ensuring trust in the adjudication process. While there is a strong argument that individual decisions should be able to be appealed on the grounds that they are unreasonable or parties weren't afforded procedural fairness, it is appropriate for a court rather than an assessor to review these cases. This is because there is a risk that, unlike the court, the assessor will be subject to commercial influence because they are appointed by the AFCA board.

B5Q1 Do you agree with our proposed requirements for the independent assessor? If not, why not?

We generally support this proposal. We do question whether requirement (i) would duplicate AFCA's own reporting. Perhaps the independent assessor should comment on the veracity and comprehensiveness of AFCA's own reporting on the matters covered by (i), and provide additional commentary where it considers AFCA's own reports are lacking.

B6Q1 Is this is a sufficient timeframe for financial firms to update all of their legal disclosures (as set out in paragraph 35) and other consumer communications? If not, why not? Please provide specific detail in your response. B6Q2 Should we provide transitional relief from external dispute resolution disclosure obligations in the lead up to AFCA commencement?

The timeframe may be too tight for member firms to ensure that all representatives have updated their documents by the date AFCA starts receiving complaints – especially if AFCA's contact details are not available until close to that date. Further, if arrangements are made to ensure that once AFCA starts receiving complaints, complainants covered by AFCA who contact FOS or CIO are redirected to AFCA, complainants are unlikely to be disadvantaged.

We recommend that ASIC consider providing general transitional relief. At any rate, transitional relief should be provided to clarify that there is no requirement to reissue (or issue a supplement) by the date AFCA starts receiving complaints hardcopy documents to provide updated EDR information.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Dimitri Diamantes CFP®
Policy Manager
Financial Planning Association of Australia[1]

[1] The Financial Planning Association (FPA) has more than 13,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
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