

9 August 2019

Ms Jacqueline Rush  
Senior Policy Adviser  
Australian Securities and Investments Commission

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Dear Ms Rush,

**Update to RG 165: Internal dispute resolution  
Submission by Australian Finance Group Ltd ACN 066 385 822**

Australian Finance Group Ltd (**AFG**) was founded in 1994, was listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia's largest mortgage broking groups. Approximately 2,950 brokers (of which 1320 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG.

AFG welcomes the opportunity to respond to the exposure draft of the *Internal dispute resolution: Update to RG 165* issued by the Australian Securities and Investments Commission (**ASIC**) on 15 May 2019 (the **Consultation Paper**). For the purposes of this submission, AFG's response is limited to provide some key observations below and address some of the questions raised in CP311.

## **BACKGROUND**

ASIC is responsible for overseeing the operation of Australia's financial services dispute resolution framework, which includes:

- setting the standards and requirements for the internal dispute resolution (**IDR**) systems of financial firms; and
- oversight of the Australian Financial Complaints Authority (**AFCA**).

*The Treasury Laws Amendment (Putting Customers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (AFCA Act)* established a single external dispute resolution (**EDR**) body, AFCA, to deal with all complaints about financial products and services. AFCA commenced operations on 1 November 2018.

Against this background, our comments on the update to RG165 are set out below.

AFG agrees in principle with the majority of ASIC's recommendations in CP 311. However, we make the following observations and submissions in relation to some of the proposals.

## KEY OBSERVATIONS AND SUBMISSIONS

### 1. Definition of a 'complaint' to include expressions of dissatisfaction made 'about' an organisation, including those made through social media platforms.

It is generally understood that there are new avenues for consumers to engage with organisations, including those made through forums or social media platforms and accordingly organisations are engaging with their consumers through these avenues.

Finance aggregators, such as AFG, have many credit representatives and other members operating under them, numbering in the thousands. Each likely operating their own social media platforms. A complaint relating to one of those credit representatives will usually be conducted in the name of the aggregator, even though the aggregator may have had no involvement in the transaction other than the supply of business level services.

It is disproportionately burdensome, likely impossible and inappropriate to require aggregators to monitor and supervise all social media accounts of its members or credit representatives. On this basis, if ASIC formalises a view that a financial firm has an obligation to respond to a complaint lodged via social media, we submit that the obligation should be restricted to instances where the complaint is lodged against a social media company profile (or equivalent) that the financial firm directly operates and controls.

Further, if it does become a requirement to proactively monitor social media platforms for consumer expressions of dissatisfaction, which AFG submits it should not, ASIC will need to provide more granular clarity as to what is classified as an 'expression of dissatisfaction'. For example, if a consumer posts a negative social media comment about a financial firm and additional people comment in agreement to the post by 'liking' or 'retweeting' the post, do each of these additional actions constitute an expression of dissatisfaction which the financial firm would then be obliged to identify, review and respond to?

### 2. Recording all complaints received

ASIC propose to mandate the recording of all complaints, without discretion; including those that are resolved to a complainant's satisfaction at the first point of contact. RG 165 currently only encourages, but does not require, financial firms to record complaints that are resolved to a complainant's 'complete satisfaction' by the end of the fifth business day after the complaint was received. We submit that the proposed change to require recording of all complaints received, even those fully resolved to the complainant's complete satisfaction, by the end of the fifth day after the complaint was received will have significant cost impacts to the industry. Additionally, we do not believe that this adjustment will provide ASIC with enhanced complaint data. Our reasons for this view are set out below:

1. The subject matter of the short-term grievances under consideration are often very minor issues, and frequently relate to misunderstandings or matters of negligible impact; as evidenced by the fact that these grievances can be resolved quickly with minimal impact on the parties involved; and

2. We are concerned that the additional compliance burden of capturing these additional matters will create significant cost and resource imposts for financial firms, whilst saturating complaints data reported to ASIC with a higher proportion of non-substantial matters.

AFG therefore submits that ASIC should not introduce a new requirement for the recording of all complaints. Our view is that ASIC should still enable financial firms to apply qualitative discretion on those complaints resolved within 5 days as to whether they are recorded (where if the financial firms deems the matter to be not insignificant, they may record the complaint on its register).

### 3. Reduced maximum IDR timeframes

ASIC propose to reduce the maximum timeframes for financial firm's internal dispute resolution processes. ASIC has guided that the reason for the reduction of the standard complaint timeframe from 45 days to 30 days was due to consumer research. ASIC advises that the research indicated that conclusions which took longer than 45 days, consumers demonstrated a higher level of dissatisfaction with the IDR process and experienced more stress<sup>1</sup>

AFG submits that consumers who were dissatisfied with complaints exceeding the timeframe from 45 days will likely remain dissatisfied with complaints taking longer than 30 days to resolve.

AFG supports the principle of responding to complaints in a prompt and efficient manner. Notwithstanding that, generally home loan complaints tend to be of a more complex nature and require significant investigation. As such AFG generally would often require more than 30 days to investigate a complaint concerning a home loan application. On average, AFG currently resolves complaints within 33 days of receiving the complaint.

Based on AFG's experience of complaints which have progressed to the External Dispute Resolution (**EDR**) scheme and where the EDR scheme is required to investigate and provide a view on a complaint, it takes on average 406 days for the EDR scheme resolve. This significant time period is indicative of the level of complexity in these types of complaints and the time required to adequately investigate and respond<sup>2</sup>.

Further, there are instances where consumers cause significant delays in providing information required when dealing with the complaint. In these instances, the IDR timeframe can be 'used up' waiting for information from the consumer which is required for the financial firm's investigation.

As such we have significant concerns around the feasibility of reducing the timeframe applying to IDR responses. The net result will likely be;

1. additional complaints progress to the EDR scheme, which will only cause much greater delays in concluding and further financial burden on the financial firm (who pays for the EDR scheme's service); and
2. the stated aims of increasing levels of satisfaction and decreasing levels of stress for consumers are unlikely be achieved.

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<sup>1</sup> ASIC CP311 Para 87

<sup>2</sup> Based on AFG internal data between March 2014 to July 2019, including 3 investigations (not including jurisdictional reviews) still ongoing.

#### 4. IDR data reporting and data dictionary

Although AFG generally agrees with the AFCA Act requirement of a mandatory IDR data reporting regime to ASIC, great care needs to be established with its introduction and determination of which financial firms will be required to report IDR data.

The obligations required by ASIC in the reporting are extensive and will require substantial investment in information technology to capture and provide information to ASIC and to comply with the information security controls required under federal privacy legislation.

Recognising that the majority of mortgage brokers are small businesses, we submit that the cost of establishing this technology and the required processes is likely to be prohibitive for these small businesses to comply. This may put them at a competitive disadvantage and may cause them to be in breach of the *National Consumer Credit Protection Act 2009* (Cth).

In addition, we have specific concerns with the data set required to be recorded through the provided data dictionary<sup>3</sup> below:

1. Potentially sensitive questions, such as the complainant's gender, Aboriginal / Torres Strait Islander descent and age when dealing with a complaint may:
  - a. inflame a situation or damage the relationship between the consumer and financial firm when dealing with a sensitive issue such as a complaint; and
  - b. may raise issues of perceived discrimination.As such, we submit that whilst we appreciate ASIC's desire to capture this information for data analysis and reporting, these are not appropriate questions to be captured when dealing with a complaint.
2. 'Complainant type' does not include options for multiple parties. Certain financial products such as a home loan often include more than one individual, such as a married couple. Any complaint raised in relation to the product would need to be on behalf of both parties. Therefore, AFG suggests the inclusion of additional options for complaints with multiple parties.
3. Table 6 category 4 'Margin loans' of the draft data dictionary appears to have product and service types which relate to category 3. Business and consumer guarantees (codes 21 and 22) which may be more appropriately located under category 3 of table 6 'Guarantees'.

Once again, thank you for the opportunity to provide comment. Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission.

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<sup>3</sup> ASIC CP311 Attachment 2 – data dictionary