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Jacqueline Rush
Senior Policy Advisor
Australian Securities and Investments Commission
GBP Box 9827
Melbourne VIC 3001

Via Email: IDRsubmissions@asic.gov.au

The Australian Retail OTC Derivative Association ("the Association") response to CP 311 – Internal Dispute Resolution: Update to RG 165

1. Preamble

The Association is pleased to provide comments on the consultation paper regarding proposed changes to Internal Dispute Resolution processes.

The Association and each of its members ("Members") are committed to enhancing the efficient operation, transparency and overall investor understanding and confidence in CFDs and FX within Australia, and in the Australian CFD and FX industry as a whole.

Representing over 60% of Australian CFD & FX providers by market share, the Association was established for the purpose of continuously improving existing CFD and FX industry standards and addressing specific CFD and FX industry issues and investor concerns, building upon existing legislation to deliver additional benefits to investors and elevating investor perception and understanding in dealing in CFD and FX products.

2. Introduction

The Association has the following general comments to make regarding the proposals outlined within the paper. Specific comments are considered further below when addressing the questions posed by the paper.

- Complaints made using social media platforms should not be included in the IDR process, there are far too many for licensees to monitor effectively;
- It is unnecessarily burdensome for front line staff to record every complaint received, particularly those of a trivial and benign nature that are resolved during one conversation with staff; and
- There should be no publication of IDR data at the firm level. Such publication could lead to 'gaming' of the complaints reporting process by less scrupulous licensees for competitive advantage.

3. Responses to the Questions posed:

Question B1Q1 – Do you consider that complaints made through social media channels should be dealt with under IDR processes?

If no, please provide reasons. Financial firms should explain:

> ***(a) how you currently deal with complaints made through social media channels; and***
> ***(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.***

The Association holds the view that the only time a social media complaint should be subject to the IDR process is when the client has used a social media platform operated by the licensee, and the licensee can identify the client.

In all other circumstances, such as complaints or expressions of dissatisfaction made through Facebook or Twitter, the Association is against the proposal to include social media channels in the IDR process for the following key reasons:

1. The cost of establishing and maintaining a system to monitor the thousands of varied social media platforms will be significant, particularly for smaller firms.
2. Identification of the client through social media can be difficult and raise concerns regarding the privacy of client data and the controls licensees must have in place.
3. Ensure that licensees will only be required to deal with genuine consumer complaints, as opposed to 'dummy' complaints submitted publicly on social media accounts from unscrupulous competitors or internet 'trolls' attempting to damage the licensee's brand for their own personal gains.

With regard to point 1, it is an unrealistic expectation for a licensee to monitor all social media platforms that exist for complaints or expressions of dissatisfaction made about the entity. There are new social media platforms being established every day on top of the thousands of platforms that exist already. The cost of establishing and maintaining a system to monitor, if it is even possible, would be exorbitant and an unnecessary burden to licensees.

At present, entities within the Association generally monitor certain larger social media platforms and chatrooms for any comments regarding the entity. Once identified, those posting the comments are encouraged to make the complaint through existing channels within the licensee. The Association considers this approach to be sufficient when addressing such complaints.

With regard to point 2, a licensee must be able to clearly identify a client when entering into correspondence about that client's account and personal details. It is often extremely difficult to clearly identify a client using social media. This gives rise to the risk that an individual will pretend to be an existing client in an attempt to obtain confidential client information. In order to mitigate this risk, licensees will have to direct individuals through their existing complaints channels anyway, thus negating the need for complaints on social media to be included in the IDR process as suggested.

With regard to point 3, there have been instances where negative feedback about an entity has been placed on social media platforms by competitors trying to influence consumer sentiment

about a firm. Social media can be used to distribute false claims about an entity. If social media platforms were to be included in the IDR process, this could lead to an increase in false disputes being posted online with the intent of damaging the reputation of a competitor. These false disputes would also have to be included in the proposed data reporting to ASIC and this would lead to any data submitted being corrupted.

Question B2Q1 – Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?

The Association views the guidance provided to be sufficient and will not significantly impact the current processes of member firms.

Question B2Q2 – Is any additional guidance required about the definition of 'complaint'? If yes, please provide:

(a) details of any issues that require clarification; and
(b) any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165.

As per the response provided in question B1Q1, the only clarification should relate to which social media platforms are covered, if any.

Question B3Q1 – Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.

The proposed modification does not affect the members of the Association and as such no comment is provided.

Question B4Q1 - We propose to update RG 165 to require financial firms to record all complaints, including those that are resolved to a complainant's satisfaction at the first point of contact.
Note: Firms will not, however, be required to provide an IDR response for complaints resolved to a complainant's satisfaction within five business days of receipt.
Do you agree that firms should record all complaints that they receive? If not, please provide reasons.

The Association members are of the view that all client complaints that are necessary to be recorded are done so. However, not all complaints are recorded particularly those that are resolved or withdrawn at the first point of contact. It may be unnecessarily burdensome for front line staff to record the details of every single minor complaint received that is resolved within a five-minute telephone conversation. For example, the Association would suggest that should a client that called complaining about the platform speed, who is directed to restart their browser

which then fixes the issue, this should not be considered necessary to be recorded. To record ALL such complaints would be burdensome.

In addition to the example above, the client's grievance may be due to a lack of knowledge (e.g. of a platform functionality) and further education provided by staff during that interaction may resolve the client' knowledge gap. With regards to any expression of dissatisfaction, further clarification should be provided, e.g. 'I am unhappy with the font on your platform' or 'I prefer the colour of the old platform', would be captured as an expression of dissatisfaction however is feedback rather than a complaint and should either be captured as feedback or exempted.

The Association would suggest that some discretion needs to be applied when considering the need to record a complaint. This discretion will be dependant on the nature of the individual licensee's product and circumstances. However, it should also be suggested that where it is not clear whether a complaint should be recorded or not, then the firm should record that complaint regardless.

Question B5Q1 - Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

The Association has no issue with assigning a unique identifier and as such have no further comment.

Question B5Q2 - Do you consider that the data set proposed in the data dictionary is appropriate? In particular:

(a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers?

(b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?

The Association broadly considers the proposed data set to be appropriate, however in certain circumstances some of the fields may be open to interpretation or do not effectively cover all outcomes for that area. This could lead to inconsistencies in the data being collated by ASIC. This could also be exacerbated by the expanded definition of 'complaint' being proposed.

For example, a trade investigation, an issue with withdrawal or funding, or an IT server issue could arguably be classified as any of the following:

- 6 = Instructions;
- 9 = Service and/or administration;
- 10 = Transactions; or
- 11 = Other

For the field 'complaint remedy', the only options are financial or non-financial. The Association considers these two options to be too narrow and do not describe all possible remedial outcomes for a complaint. Often a complaint can be resolved by simple explanation to the client of how a system or function works, there is no 'remedy' as such. The complaint may also be withdrawn, which would again lead to no remedy occurring. The Association suggests either adding more fields to the section to accommodate closed complaints where no remedy was required or making the field non-mandatory. In addition, the term 'financial remedy' itself may be too broad and misleading in describing the complaints outcome. Often complaints are resolved by a licensee providing a 'goodwill' payment to the client. This may occur in cases where the licensee is not liable to compensate the client nor has any wrongdoing been proven, yet the licensee wishes to maintain the relationship with the client and as such makes a payment to the client.

The Association notes that the field regarding whether the complaint has been referred to AFCA is a simple 'Yes' or 'No'. There are many cases where clients refer a matter to AFCA before the licensee has had an opportunity to address or resolve the complaint. No IDR process has been implemented in these cases. As such, by then putting a date the case went to AFCA the data submitted will show an inaccurate number of days for the case being at the EDR stage when in fact it has been referred to the licensee by AFCA to complete the IDR process. Consequently, the Association suggest that the fields related to AFCA only be populated when it has been clearly identified as moving to the EDR process. This will ensure the data submitted is accurate regarding the number of days taken to resolve cases at AFCA.

With regard to the data dictionary and the submission of the data set to ASIC using a csv file format, the Association would like it noted that for its members there may be a significant cost when implementing appropriate systems to capture and extract the data requested. The Association requests that there should a long transition period to allow for licensees to amend their systems and spread the cost of implementation. ASIC may also consider an alternative, simpler form of reporting for those licensees that, on average, do not exceed a certain number of complaints per month. It may be considered unfair for smaller licensees, or licensees who receive very few complaints due to the nature of their business, to have to carry the same burden in establishing the same reporting systems required for larger entities.

Question B6Q1 - We will issue a legislative instrument setting out our IDR data reporting requirements. We propose that all financial firms that are required to report IDR data to ASIC must:

(a) for each complaint received, report against a set of prescribed data variables (set out in the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint;

(b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint);

(c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and

(d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated-value (CSV) files (25 MB maximum size).

Do you agree with our proposed requirements for IDR data reporting? In particular:

(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?
(b) Is the proposed maximum size of 25 MB for the CSV files adequate?
(c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

The Association would like to refer ASIC to its response under question B5Q2 with particular regard to the final paragraph and a potential alternative to the submission of csv files for those that receive few complaints per month.

The Association would like to suggest that because of the trivial and often benign nature of certain complaints, such as the example provided under question B4Q1, the following be excluded from reporting:

- Complaints settled in under 5 days: and
- Complaints received by the licensee less than 5 days before the report is due, to allow for the complaint to be resolved within 5 days.

The Association would also suggest the reporting period should be annual, to maintain consistency with other annual reports and reporting obligations.

Question B7Q1 - We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC's powers under s1 of Sch 2 to the AFCA Act.

What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

The Association's view is that IDR data should only ever be published at an aggregate level. When publishing such data ASIC should state why the data is being published and what key points they would like to identify over that period. For example, if over any given period a particular trend was seen then this could be identified. Possible reasons for the trend could also be noted. For example, if a significant event occurred during that period which led to a rush of complaints of a particular kind, this could be consider an outlier to normal functioning of the market.

The Association's view is that there should be no publication of IDR data at the firm level. Such publication could lead to 'gaming' of the complaints reporting process by less scrupulous licensees for competitive advantage. It may encourage firms to not fully report the complaints received, to misreport them or make it even harder for clients to complain, thus have the opposite effect to the intent of the changes suggested.

The publication of data at the firm level may also lead to licensee's providing less financial compensation to clients. If a licensee is identified as providing numerous financial payments to settle complaints, then other clients may be encouraged to lodge false claims in the hope of receiving similar compensation.

The Association suggests that data collated at the firm level should only be used internally by ASIC for its own investigative purposes if required.

Question B8Q1 - We propose to set out new minimum requirements for the content of IDR responses: see draft updated RG 165 at RG 165.74–RG 165.77 in Attachment 1. When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:

(a) identifying and addressing all the issues raised in the complaint;
(b) setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and
(c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

Do you agree with our minimum content requirements for IDR responses? If not, why not?

The Association has no objection or comments to make regarding the suggested minimum content requirements.

The Association is always open to assisting ASIC in any way it can. Should there be any questions regarding the information provided in the response to the consultation please contact us.

Yours sincerely,

John Blundell
Australian Retail OTC Derivatives Association