Stockbrokers
And Financial Advisers
Association Limited

9 August, 2019

Ms Jacqueline Rush
Senior Policy Adviser
Australian Securities & Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: IDRSubmissions@asic.gov.au

Dear Ms Rush,

ASIC CONSULTATION PAPER CP 311 – INTERNAL DISPUTE RESOLUTION SUBMISSION FROM STOCKBROKERS AND FINANCIAL ADVISERS ASSOCIATION

We refer to ASIC Consultation Paper CP 311 issued on 15 May 2019 ("CP 311") proposing amendments to RG 165 relating to complaints handling and Internal Dispute Resolution (IDR). The Stockbrokers and Financial Advisers Association (SAFAA) appreciates the opportunity to provide the comments below in relation to the Consultation Paper.

Preliminary Comments

SAFAA members are supportive of Internal Dispute Resolution as an aid to the quick and cost-effective resolution of client complaints. This is in the interests of Licensees, in ensuring that their clients remain satisfied and that dissatisfaction does not result in litigation, as much as it is in the interests of clients.

The Stockbroking and listed securities advice sector has an exemplary record as regards the handling of customer complaints. This is evidenced by the complaints statistics published by the Financial Ombudsman Service (FOS) for this sector.

For 2017/18 (the latest figures available from FOS, the predecessor to AFCA), a total of 108 disputes were accepted by FOS in relation to stockbroking. Of these, 62 were resolved by the Financial Service Provider; 9 resulted in a decision by FOS in favour of the FSP; and 5 resulted in a decision in favour of the Applicant. This is out of a total of more than 43,000 disputes lodged with FOS. The number of exchange market transactions on ASX alone number around 400 million per annum for shares, let alone the trading in other products such as options and warrants.

These figures would strongly indicate that the rate of investor complaints in the listed securities sector is very low and, to the extent that complaints do arise, they are being effectively dealt with through the Licensees' IDR process. The fact that, of the complaints that were dealt with by FOS in the year referred to, the number of rulings by FOA in favour of the licensee exceeded the number in favour of the applicant, further supports that **the IDR process is working effectively in the stockbroking sector**.

Based on this, the proposals in CP 311 are **attempting to solve a problem that does not exist**. However, in the process, the CP 311 changes will add additional layers of administration and cost for no real benefit. And it will not simply be a matter of the additional administrative cost at the Licensees' end. ASIC will be making more work for itself in processing the new layers of reporting, all of which will then also be funded by AFSLs through cost recovery.

The ultimate outcome will be extra costs for industry, which will ultimately force up the cost of providing advice and services to clients, for no real benefit.

If the Stockbroking sector can make the IDR system work effectively as it is currently structured, there is no reason why the same should not be the case in all financial sectors. What is needed is a better approach to the subject by the businesses themselves, and **better supervision and enforcement by ASIC**, which has in its possession a significant array of tools in the Corporations Act and AFSL regime to bring about behavioural and cultural change within AFSL holders, or within particular industry sectors. Indeed, these were key lessons drawn out by Justice Hayne during the Royal Commission.

In relation to the **definition** of complaint, SAFAA submits that the changes do not achieve anything and that the existing definition **does not warrant being changed**.

In relation to the proposed reporting to ASIC, SAFAA submits that there is little real benefit from the reporting that would justify the costs. In addition, there are other issues with the reporting requirements.

We set out below our in more detail comments on specific proposals in CP 311 and the proposed changes to RG 165.

Specific Submissions

1. Definition of "complaint"

We note the proposed new definition of a complaint as follows:

> *"[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required."*

In relation to this new wording:

(a) Regarding the words "*Or about*". SAFAA does not agree with this change. This wording is so broad as to require an AFSL to monitor all sources of information for comments about the Licensee. Theoretically, firms will need to monitor the entire internet on an ongoing basis. This would require a media department in order to monitor properly. That would be extremely expensive, even for a large firm, but beyond the resources of a small or medium firm.

We note that the CP refers to the AFSL monitoring complaints made on the company's social pages or website. Whilst this is a welcome statement of intention, which would read down the breadth of the proposed wording, complaints made in this way would surely fall within the meaning of a complaint made "to the organization", which would bring it within the existing wording of the definition. In any event, if there is to be any qualification to the breadth of the requirement, then it should be in the actual requirement, and not in ancillary documentation.

Further, the position about even a firm's social media page may not be completely straightforward. There will be some sites where the firm may not be allowed to access information relating to a post, even on the firm's own page. There are limits to what a firm should be required to do in relation to a complaint where the complainant cannot be contacted to verify the

circumstances of the complaint and find out more information to be able to respond or to resolve the issue (if in fact there is one).

As a matter of principle, the IDR process is a significant requirement to impose on a business. ASFSLs accept IDR as part of doing business. However, it is not too much to insist that a complainant use the Licensee's website in order to make a complaint, and not make comments on a raft of third party social media sites and expect that these must be identified and actioned.

For these reasons, SAFAA submits that this change to the definition *should not* proceed. If ASIC wants to clarify that it extends to Licensee's web site or social media, then this can be achieved by amending Guidance.

(b) The addition of "*staff*". SAFAA does not agree with this change. The purpose of the IDR regime is that it should relate to the provision of financial products or services. Without any qualification, the proposal could result in complaints about a staff member for unrelated activities, for example, behaviour of a staff member in a bar, at a community event etc.

By way of further example, under the proposed definition, a person could write to a firm, or even simply comment on a social media page, concerning a staff member's social media posts which were on a subject(s) unrelated to their role or the business of the firm. The proposed IDR framework would require that the matter be deal with, managed *and reported* under the IDR regime for financial complaints.

The definition should be left as it is. Any complaint about the actions of a staff member in the course of their actions as an employee or representative is by definition a complaint in respect of the Licensee and would come within the terms of the existing definition of "complaint". This proposed change to the definition is not warranted.

(c) Regarding the words "o*r legally required*". SAFAA has difficulty understanding what this proposed change is meant to achieve. If something is legally required, then surely it would be "*explicitly…… expected*" within the existing wording of the definition. The additional wording in our view is unnecessary, as it adds nothing to the definition.

2. Six Monthly IDR Data Reporting to ASIC

SAFAA was not supportive of the introduction of the IDR Data reporting regime. In our view, the information which it will generate will be of dubious value and will not justify the administrative cost of implementation of the requirements, which we believe will be just one more added cost overhead.

Not unsurprisingly, SAFAA does not support ASIC's proposal for 6 monthly reporting. If there is to be reporting, an annual basis would be enough.

3. Guiding Principles for the publication of IDR data

SAFAA assumes that ASIC will analyse and digest the information reported to in an appropriate way.

SAFAA has residual concerns about how information will be interpreted by the public at large if the information is widely published. The ordinary person may draw inappropriate comparisons, for example, the fact that an online broker had 100 reported complaints during the period but may have had a 10% share of market trading in the order of tens of millions of trades during the year.

If the IDR information is to be published, it behoves ASIC to ensure that there is appropriate explanatory information that will enable the public to comprehend and not misconstrue the data.

4. Reduced Maximum IDR timeframes

The proposal to reduce the maximum IDR timeframe from 45 days to 30 days is a significant concern.

There is no one-size-fits all approach to the time needed to properly deal with a complaint. In a simple matter, 30 days would be sufficient, however in relation to listed securities, a complaint can raise issues of significant complexity. For instance, complaints in relation to stockbroking may deal with complex trading strategies, such as Exchange Traded Options trading, and so on, and can relate to a period of one or two years (or even longer). This situation can arise more than on an "exceptional" basis.

Similarly, complaints concerning financial product advice often relate to ongoing advice provided over several years. Full investigation of a client's complaint and provision of a

substantive response can require review of a material number of phone conversations, email and other correspondence (some of which may be archived and not immediately available) in relation to several transactions.

One firm has highlighted an example where a complainant became uncontactable for a period of weeks following the lodgment of the complaint, by reason of going overseas on holiday. The actions of a complainant can render the time frame impossible to achieve, and the ASIC RG should make provision for situations where this is the case, or where the complainant is happy to agree to a time frame longer than that specified in the RG.

Accordingly, SAFAA does not accept that reducing the maximum timeframes for most firms to 30 days will not have a substantial operational impact. We also note that the equivalent timeframes in New Zealand and the United Kingdom are 40 days and eight weeks respectively.

A hard and fast 30-day limit may work for some industry sectors. SAFAA strongly submits that the existing timeframes in RG 165 should **remain as they are, at least in relation to stockbroking, financial advice and listed securities**, particularly given the ancillary proposal to limit firms' capacity to issue IDR delay notifications to 'exceptional circumstances' only.

We note that the 45-day limit is proposed to be retained for superannuation complaints. This acknowledges that different limits in different sectors are appropriate.

5. Timeframe for acknowledging complaint (one business day)

The introduction of an "expectation" that a complaint will be acknowledged within 24 hours or one business day [RG 165.69] is very problematic. There are many reasons why this may be impossible to achieve in practice, and we note that RG 165 acknowledges this in the paragraph immediately following [RG 165.70] by saying that in that event, the complaint should be acknowledged as soon as practicable.

The latter wording should be how the obligations is worded, and if there is a desire for an absolute time limit to prevent abuse, we would recommend a period of a number of days that is more logistically reasonable.

6. Change to the Definition of "small business"

As a matter of fundamental principle, SAFAA opposes ASIC unilaterally making a change to the scope of a scheme that was legislated by Federal Parliament.

If the scheme is to be expanded by means of a change to the definition of "small business", this should also be done by Parliament.

We note that ASIC is relying on a unilateral decision by AFCA to make the same change to the "small business" in its rules and is now citing the desirability of consistency with the AFCA Rules as a reason to make the change to the IDR framework.

We note that ASIC refers at paragraph 44 of CP 311 to the definition being "expressly endorsed" by the Minister for Revenue and Financial Services in the authorization of AFCA. This is no substitute for matters of this nature being dealt with by Parliament.

In addition, SAFAA is concerned that the proposed extension will result in some firms, that only provide financial products and services to wholesale clients, being required to implement an IDR scheme, in contradiction to the express legislative intent of section 912A(1)(g)(i). In the alternative, it is not difficult to imagine the situation where a wholesale-only firm which historically provided financial services to a non-manufacturing business with 50 staff, ceasing to offer such services as the proposed change would require that firm to effectively implement a IDR scheme and become a member of AFCA for that client.

Accordingly, the proposed change may have a materially negative effect on some firms and could reduce small business access to financial services. Given these potentially grave consequence, to the extent this change is sought by the Minister for Revenue and Financial Services, it should be subject to express legislation.

7. Prescribed Data sets for Complaints

Members have highlighted that there are some fields set out in the prescribed data set in RG 165 that would not currently be collected in relation to complaints by firms in the listed securities sector. For example, Aboriginal/Torres Strait Islander, gender and age, would not be collected. Introducing this will require re-engineering of systems.

There is also the complication that will arise where a complainant declines to provide some or all those details, such as their age or gender, and may resent this information even being requested. The issue of gender is becoming increasingly fluid.

In connection with re-engineering of systems, and related changes to Operating Procedures and the training that would follow, we note that the proposed IDR reporting is to commence on 30/06/2021, but that data capture will need to commence from 01/07/20. This leaves a very short timeframe between when any changes to RG 165 are made and the date that information capture must start. SAFAA submits that the relevant two dates should by pushed back by at least 6 months.

CONCLUSION

SAFAA appreciates the opportunity to comment on the Proposals in CP311. We would be happy to discuss any issues arising these comments, or to provide any further material that may assist. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email [redacted].

Yours sincerely,

Andrew Green
Chief Executive