

9 August 2019

Jacqueline Rush
Senior Policy Adviser
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: IDRSubmissions@asic.gov.au

Dear Ms Rush,

Re: Consultation Paper 311 – Internal dispute resolution: Update to RG 165

American Express Australia (**American Express**) welcomes the opportunity to provide feedback on Consultation Paper 311 (CP 311).

In making this submission, our responses to specific questions on which we have strong views are contained in the Appendix. We have also contributed to the responses submitted by the Australian Finance Industry Association (AFIA).

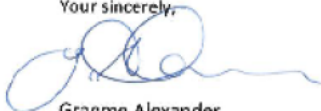
About American Express

American Express is a global payments network with direct relationships connecting consumers, businesses and merchants. It provides innovative payment, travel and expense management solutions for individuals and businesses of all sizes. With a 168-year history built on service, trust and security and with one of the most recognised brands globally, American Express aspires to provide the world's best customer experience every day. American Express has been backing Australians since 1954 with the first American Express card issued in this market in 1974. Deeply committed to supporting the nation's growth and economic prosperity, we employ more than 1,400 Australians across the country.

We would welcome the opportunity to meet with you in person to discuss this submission in more detail.

We ask that you treat this submission as confidential. If there is anything you wish to discuss, please do not hesitate to contact me at [REDACTED] or on (02) 9152 2424.

Your sincerely,



Graeme Alexander

Vice President - Head of Compliance & Ethics, Australia & New Zealand

Submission by American Express in Response to Consultation Paper 311

Appendix - Response to Specific Questions

| CP 311 Proposal | CP 311 Feedback Questions | American Express Comments |
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| <p>B1 We propose to update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014. It sets out the following definition of 'complaint' at p. 6:</p> <p style="padding-left: 40px;">[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.</p> <p>The AS/NZS 10002:2014 definition expands the concept of 'complaint' to include expressions of dissatisfaction made 'to or about' an organisation. We consider that this should capture complaints made by identifiable consumers on a firm's own social media platform(s).</p> | <p>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:</p> <p>(a) how you currently deal with complaints made through social media channels; and</p> <p>(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.</p> | <ul style="list-style-type: none"> • We choose to interact with our customers on social media platforms. This affords us the opportunity to manage any issues that may be raised on those platforms through our existing IDR processes. • In our view, allowing customers to express their dissatisfaction through their channel of choice is consistent with both the current definition and proposed definition of complaint. • For privacy and security reasons however, we believe the resolution of complaints, regardless of the channel through which they are made, is more efficiently handled via our existing offline IDR processes. • Critically, this ensures all IDR complaints, not just those made in social media channels, and regardless of how a customer chooses to lodge the complaint, are managed in accordance with our IDR policies and processes, as well as within regulatory guidance and time frames. • We think its important to maintain this "platform neutrality". • Managing complaints this way also ensures we have deeper sources of data to understand key complaint drivers and emerging issues. • IDR investigation and resolution processes predominantly occur outside of social media |

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| | | <p>platforms.</p> <ul style="list-style-type: none"> • For example, if more information is required from a customer, we prefer to call the them directly. Not only is this a better customer experience, it may lead to a faster resolution of the dispute. • By making a case by case assessment, we can engage with the customer in the way that is most appropriate to their complaint • Whilst we are happy to engage with our customers on social media, we believe there are inherent difficulties associated with complaints made on platforms that are external to our own. • We understand consumer's complaints made about an organisation may not necessarily be made directly to that organisation. • For example, consumers may express their dissatisfaction with an organisation through the traditional media, on public internet forums such as Oz Bargain, Reddit or Whirlpool or in public posts on Facebook or Twitter pages. • Consumers may do this anonymously or under a pseudonym, meaning the financial firm would struggle to identify their customer and verify their claims. • Whilst the individual may be happy to publicise their concerns in that way, we cannot reasonably determine if a response or resolution is explicitly or implicitly expected if the complaint is not sent to us directly. |
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| | | <ul style="list-style-type: none"> • We also think it's important for us to protect the consumer's privacy and treat their personal financial confidentially. • The wording of RG 165.37 states the following: At a minimum, we expect that a firm's IDR process will deal with complaints made: <ul style="list-style-type: none"> (a) on a firm's own social media platform(s); and (b) by a complainant who is both identifiable and contactable. • Practically, we need to verify the customer's identity before engaging with them on the substance of their complaint. We do this by verifying information provided by the consumer which is known only to them. • Additionally, the complexities and sensitivities of a customer's complaint may make it difficult to resolve on a social media platform in a way that protects the customer's privacy, personal security, financial reputation and mental wellbeing. |
| <p>B2 We propose to introduce additional guidance in draft updated RG 165 to clarify:</p> <ul style="list-style-type: none"> (a) the factors a financial firm should, and should not, consider when determining whether a matter raised by a consumer is a complaint; and (b) the point at which a complaint must be dealt with under a financial firm's IDR process. <p>See draft updated RG 165 at RG 165.32–RG 165.37 at Attachment 1 to this paper.</p> | <p>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?</p> <p>B2Q2 Is any additional guidance required about the definition of 'complaint'? If yes, please provide:</p> <ul style="list-style-type: none"> • details of any issues that require clarification; and • any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165. | <ul style="list-style-type: none"> • We have already adopted the definition of complaint as defined in AS/NZS 10002:2014. • This is reflected in our complaint handling policies and processes. • Accordingly, employees are trained to recognise complaints, log them and create unique identifiers for each issue raised, irrespective of how a customer lodges a complaint. • We do not believe that any further guidance on factors that determine if an issue is a complaint and when it should be dealt with under IDR |

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| | | <p>processes is required.</p> |
| <p>B3 We propose to modify the definition of 'small business' in the Corporations Act to align it with the small business definition in the AFCA Rules:</p> <p>A Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.</p> | <p>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.</p> | <ul style="list-style-type: none"> • We support the proposed modification of the small business definition. |
| <p>B4 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.</p> <p>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.</p> | <p>B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons.</p> | <ul style="list-style-type: none"> • The wording of the current RG 165 enables financial firms to tailor IDR procedures around the size of their business, the range of products and services offered, the nature of the customer base and the likely number and complexity of complaints and disputes. • We maintain there is merit in retaining this approach. • Whilst we understand the rationale for the proposal as detailed in the discussion paper, we question whether there will be any benefits to the consumer. |

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| | | <ul style="list-style-type: none"> • By empowering front line staff to resolve complaints at the first point of contact with a customer, issues can be resolved effectively and efficiently, without involving the customer in time consuming and possibly unnecessary administration tasks. • The issues identified by the CCMC's report and which ASIC seeks to address in the revised RG 165 are the divergent reporting practices amongst reporting firms. • ASIC has also noted that a substantial number of financial firms who are required to comply with industry codes are recording information on complaints resolved within five business days. • Our organisation does not fall into that category. This means we are not subject to or bound by all of the industry Codes referenced in CP311. • We did not participate in the development of those Codes, nor do we intend to adopt them within our business. • We have strong reservations about being held to standards that were developed for other business models. • This may be viewed as an attempt to impose inappropriate regulations on us, which would be both a disadvantage to us and our customers. • Such a step erroneously assumes that all financial firms have the business models as the Code signatories. |
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| | | <ul style="list-style-type: none"> • There is also the potential for the Code to be forcefully and incorrectly applied to our business when disputes are reviewed by EDR schemes. • Rather than achieving the goals set out in CP311, we think the automatic imposition of industry codes that we do not subscribe to will be unnecessarily burdensome. • We think the desired outcome of strengthening data integrity will in fact be achieved by the introduction of the new mandatory reporting regime. • The prescribed data sets will also give financial firms new tools in addition to those already in use to understand customer's needs, key complaint drivers and emerging issues. • By prescribing the data sets, ASIC will likely achieve the goal of promoting greater consistency in data collection practices amongst financial firms without imposing onerous and unnecessary obligations. • This in turn will lead to more accurate, more reliable IDR data, providing ASIC with a deeper source of data. • For the reasons outlined above, we do not agree that financial firms should record all complaints that are received. |
| <p>B5 To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to:</p> <p>(a) record an identifier or case reference</p> | <p>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.</p> | <ul style="list-style-type: none"> • We agree that financial firms should assign a unique identifier. We already assign a unique identifier to each complaint received which cannot be reused. |

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| <p>number for each complaint received. The identifier must be unique to each complaint and not be reused by the financial firm (see draft updated RG 165 at RG 165.58 at Attachment 1 to this paper); and</p> <p>(b) collect and record a prescribed data set for each complaint received (see draft updated RG 165 at RG 165.61–RG 165.62 at Attachment 1 and the IDR data dictionary at Attachment 2 to this paper).</p> | <p>B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular:</p> <p>(a) Do the data elements for ‘products and services line, category and type’ cover all the products and services that your financial firm offers?</p> <p>(b) Do the proposed codes for ‘complaint issue’ and ‘financial compensation’ provide adequate detail?</p> | <ul style="list-style-type: none"> • Overall, we consider the proposed data sets as set out in the data dictionary are appropriate. • We also think that the proposed codes provide adequate detail. • However, we note that there is no category for charge card products offered to consumers and small businesses by our company. Similar charge card products are offered by other financial firms. • Charge Card products are acknowledged under section s62 of the NCCPA as being exempt from the Code and are typically offered to consumers who are seeking a payment product rather than a credit card. • Consumers who use charge card products are required to repay the amounts they spend in full each month and cannot revolve a balance from month to month as they would with a credit card product. Interest is not charged on outstanding balances • To facilitate effective operation of the IDR reporting scheme, we submit that additional product and service line, category and type should be created for consumer and small business for charge card products. • We note the demographic data includes the questions “Is the complainant of Aboriginal or Torres Strait Islander descent?” We do not currently ask this question at any point during our contact with a customer. |
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| | | <ul style="list-style-type: none"> • Under the Privacy Act, we are not permitted to collect data from a customer unless it is necessary for one or more of our business purposes. • Collecting details of a customer’s ethnicity is not required when making decisions about providing credit. • Whilst we note the relevant code in the Data Dictionary is “Not stated/unknown”, it is not sufficiently clear whether it is ASIC’s expectation for this information to be collected going forward, or if it will be optional. We would appreciate clarification on this point. • We are concerned that it may be inappropriate for the collection of such sensitive data to become mandatory for the single purpose of ASIC’s IDR data reporting scheme. • We think further consideration of the proposed amendments to RG 165.87 and 15.88 are warranted. These paragraphs state: <p>RG 165.87 Complaint files should not be closed and categorised as resolved without adequately assessing the complainant’s level of satisfaction with the actions taken by the firm.</p> <p>RG 165.88 When determining whether a complaint has been resolved to a complainant’s satisfaction, therefore, we expect firms to consider whether:</p> <p>(a) the complainant has confirmed (verbally or in writing) that they are satisfied with the action(s) taken by the financial firm in response to the complaint and do not wish to take the matter further; or</p> |
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| | | <p>(b) other circumstances exist that make it reasonable for the firm to form the view that the complaint has been resolved to the complainant's satisfaction</p> <ul style="list-style-type: none"> • We are not confident that these paragraphs provide the "clear guidance on what factors financial firms must take into account when considering whether a complaint has been resolved to a complainant's satisfaction." • Whilst this is an improvement on the requirement to ensure a complaint has been resolved to the complainant's complete satisfaction, we believe further clarification would be beneficial. • The phrase "complainant's satisfaction" is problematic as statistically, there will always be a small percentage of customers whose complaints will be never be resolved to their satisfaction. A smaller percentage of complainants will become vexatious in attempts to achieve outcomes that are neither feasible, reasonable or even legal. • Other complainants may abuse the disputes process to delay repaying their debts, to stall collection actions or subvert legal processes. They may also intentionally refuse to close a complaint or become non-responsive as a perceived punishment to the financial firm. • "For profit" advocates may also be inclined to abuse IDR processes by claiming their clients are dissatisfied with appropriate and legal resolutions. • Ideally, the guidance should acknowledge that some complaints may never be resolved to the |
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| | | <p>complainant's satisfaction.</p> <ul style="list-style-type: none"> The guidance that should also state that by taking all reasonable steps in such situations, and prior to closing a complaint and referring it to EDR, the financial firm has fulfilled its IDR obligations. |
| <p>B6 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:</p> <ul style="list-style-type: none"> (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). | <p>B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular:</p> <ul style="list-style-type: none"> (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? | <ul style="list-style-type: none"> We agree with the proposed requirements for IDR reporting requirements, subject to our comments in our response to B5. |

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| <p>B8 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:</p> <ul style="list-style-type: none"> (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. | <p>B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?</p> | <ul style="list-style-type: none"> • We agree with the proposed minimum content requirements. |
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| <p>B11 We propose to:</p> <ul style="list-style-type: none"> (a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days; (b) reduce the maximum IDR timeframe for all other complaints (excluding credit complaints involving hardship notices and/or requests to postpone enforcement proceedings and default notices where the maximum timeframe is generally 21 days) from 45 days to 30 days; and (c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only. | <p>B11Q1 Do you agree with our CP 311 Proposals to reduce the maximum IDR timeframes? If not, please provide:</p> <ul style="list-style-type: none"> (a) reasons and any CP 311 Proposals for alternative maximum IDR timeframes; and (b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line. <p>B11Q2 We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?</p> | <ul style="list-style-type: none"> • We agree with the proposals to reduce the maximum IDR timeframes. |
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| <p>B13 We propose to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis:</p> <ul style="list-style-type: none"> (a) Boards and financial firm owners must set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints. (b) Reports to the board and executive committees must include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints. (c) Financial firms must identify possible systemic issues from complaints by: <ul style="list-style-type: none"> (i) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues; (ii) regularly analysing complaint data sets; and (iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues. (d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action. | <p>B13Q1 Do you consider that our CP 311 Proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.</p> | <ul style="list-style-type: none"> • Financial firms who hold Australian Credit Licenses are already subject to the systemic issue identification, escalation and analysis requirements proposed in CP311. • This mean we already have the means to identify possible systemic issues from complaints by considering whether each complaint involves potentially systemic issues. • We continuously analyse complaint data and conduct root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues. • ACL holders must subscribe to an external disputes resolution scheme, which promotes the and the identification, escalation and reporting of systemic issues by financial firms. • We believe these processes are sufficient and achieved the outcomes described in the proposals in CP311. |
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(e) Financial firms must have processes and systems in place to ensure that systemic issue escalations are followed up and reported on internally in a timely manner.

See draft updated RG 165 at RG 165.128–RG 165.133 at Attachment 1 to this paper.

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| <p>B14 We propose to update our guidance to reflect the requirements for effective complaint management in AS/NZS 10002:2014: see Section F of draft updated RG 165.</p> | <p>B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.</p> | <ul style="list-style-type: none"> We agree with the proposed approach to the application of AS/NZS 10002:2014 in Section F of draft updated RG 165. |
| <p>B15 We propose that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments immediately on the publication of the updated RG 165, except for the requirements listed in Table 2.</p> | <p>B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your CP 311 Proposals for alternative implementation periods.</p> <p>B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.</p> | <ul style="list-style-type: none"> In the context of our opinions expressed in response to B4Q1, we agree that the transition periods set out in Table 2 are appropriate, on the proviso that financial firms who are not required to subscribe to an industry code should not be compelled to adopt those standards. However, should ASIC compel all financial firms who do not currently subscribe to an industry code to record all complaints captured in their organisation, even if they are resolved in less than 5 days, then we believe further consultation on transitional periods will be required. We further submit that the transitional period for non-industry code firms to record prescribed complaint data for every complaint received should be a minimum of twelve months after the publication of the revised RG 165. |