

9 February 2021

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Senior Manager, Behavioural Research and Policy Unit  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

Dear Sir/Madam

## **ADDENDUM TO CONSULTATION PAPER 311: INTERNAL DISPUTE RESOLUTION**

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms which provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

As we pointed out in our [submission](#) to ASIC on Consultation Paper 311 on 9 August 2019, SAFAA members are supportive of Internal Dispute Resolution as an aid to the quick and cost-effective resolution of client complaints. The stockbroking and listed securities advice sector continues to have an exemplary record as regards the handling of customer complaints. As reported in the most recent AFCA Complaint statistics, out of a total of 80,833 complaints received during the period 1 October 2019 to 30 September 2020, only 4,595 complaints related to investments and advice. Of this number, only 488 complaints (or 0.6%) were made against stockbrokers. To place this complaints figure into context, during the 2020 calendar year, there were 439, 360, 450 equity trades on the ASX. Of the 4,595 complaints related to investments and advice, 4, 432 have been closed, with the majority of the complaints either falling outside of the rules or resolved by the financial firm.

Once again, these figures 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. We reiterate the point made in our 2019 submission that the AFCA complaint figures support our contention that the IDR process is working effectively in the stockbroking and investment advice sector and that the proposals in CP 311 are attempting to solve a problem that does not exist. SAFAA has previously argued that the CP 311 changes will add additional layers of administration and cost for no real benefit for clients. The changes will not only increase administrative costs for licensees. ASIC will also be adding to its workload by processing the new layers of reporting, all of which will then also be funded by AFSLs through the ASIC industry levy.

The ultimate outcome will be extra costs for industry, which will ultimately force up the cost of providing advice and services to clients.

In our recent [submission](#) to ASIC on *Consultation Paper 332 on the affordability of advice*, SAFAA provided details of a selection of recent legislation impacting on the legal and compliance costs of stockbrokers providing

advice to retail clients, together with the costs to the industry calculated by government. Our members are currently preparing for or implementing major regulatory changes including:

- forward fee disclosure
- breach reporting
- the Design and Distribution Obligations and
- reference checking.

The increased costs of the AFCA and IDR reforms were not included in that table – we note that the revised explanatory memorandum estimated the annual regulatory costs to business of the AFCA and IDR reforms at \$43.85 million. These are just part of the escalating regulatory costs the industry is currently facing.

SAFAA recommends that ASIC approach the IDR reforms in a way that takes into account both the escalating regulatory burden and costs impacting our members — which in turn adds to the cost of accessing financial advice — and the very low number of customer complaints made against our members each year.

The IDR reforms will require licensees to create their own complaint reporting processes (in various formats) that will create work for both ASIC and licensees. We encourage ASIC to consider developing a portal through which licensees can register their complaints in a consistent manner and format.

## Detailed comments

SAFAA provides the following detailed comments on the points raised in Attachments 1 and 2 to the ASIC media release on the Addendum to Consultation Paper 311.

### ASIC updates to the draft data dictionary

#### Complaint data

ASIC proposes in response to industry feedback and its own internal consideration that each complaint will only be able to include one product or service and that if a complainant complains about multiple products and services, these would be recorded as multiple complaints (ie one complaint per product or service).

We have received member feedback that this approach is problematic in practice. It will require duplication of complaints, which will cause internal confusion and ‘double handling’ in the administration of complaints, and affect the accuracy of the data being collected by ASIC as it will conflate/duplicate the data being recorded.

### Other IDR reporting requirement proposals

#### Reporting periods and lodgement due dates

In CP 311 ASIC proposed that financial firms would report to ASIC every six months, by the end of the calendar month following each reporting period. As detailed in our submission of August 2019, SAFAA is not supportive of the introduction of the IDR Data reporting regime. We also do not support ASIC’s proposal for six-monthly reporting. If there is to be reporting, we consider that reporting on an annual basis is sufficient.

We are concerned to read that ASIC is now considering whether it would be more appropriate for firms to report data on a quarterly basis, rather than every six months, thereby further increasing the regulatory burden on our members. SAFAA reiterates its position that if reporting is required it should be limited to an annual obligation.

#### Additional data elements on consumer vulnerability

ASIC proposes to introduce a data element to record whether the consumer or small business has been flagged as experiencing vulnerability at the time the complaint is made.

Without objective guidance it will be difficult to see how licensees will practically determine whether a client should be ‘flagged for vulnerability.’ While this may be a suitable step for AFCA to take when administering complaints, we consider that this is outside the experience of licensees.

## **Internal dispute resolution: Updated draft data dictionary**

### **Complaint identifying information**

#### **Table 2: Object class—Complainant demographics**

#### **Item 3 Complainant type**

The data dictionary only provides for individuals and small businesses. This categorisation excludes trusts, couples and companies. It is unclear how these entities are to be recorded.

### **Complaint information**

#### **Table 3: Object class—Complaint information**

#### **Item 21 Outcome in whose favour**

The data dictionary requires a licensee to provide details of the overall outcome of the complaint as being either:

- in favour of the complainant in full or in part
- in favour of the entity.

Determining whether a decision was made in favour of the client or the licensee is subjective. It is unclear what determines whether the outcome is in favour of a particular party. No doubt different licensees will each form a different view. It is also unclear how the outcome is to be categorised if the complaint is withdrawn. While this category may be helpful for AFCA to apply on the complaints it deals with, it is less suitable in the context of licensees undertaking their own complaints resolution processes.

### **Appendix: Codes reference tables**

#### **Complaint issue**

#### **Table 13: Complaint issue – Complaint issue category**

We have received member feedback that there are too many categories of complaint (77) as well as overlaps between different complaint types, which will create issues with complaint categorisation in practice.

## **Conclusion**

We note that ASIC will invite a number of financial firms to participate in a pilot to test the data dictionary and the data reporting systems in the second half of 2021. SAFAA would be interested in discussing the pilot program with ASIC at that time and to explore the idea of a portal through which licensees can register their complaints in a consistent manner and format.

Yours sincerely

Judith Fox  
**Chief Executive Officer**