

# **Consultation on Reportable Situations and Internal Dispute Resolution data publication**

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**Consultation Paper 383**

*16 May 2025*

# Morgans Financial Limited

## Consultation on Reportable Situations and Internal Dispute Resolution data publication: Consultation Paper 383

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Morgans Financial Limited ('**Morgans**') thanks ASIC for the opportunity to provide feedback on the proposed approach to presenting and contextualising Reportable Situation ('**RS**') and Internal Dispute Resolution ('**IDR**') data and the proposed scope of the ASIC data publication ('**the Proposal**').

Morgans is supportive of greater transparency in the financial services industry however Morgans does not believe that this Proposal will achieve the desired outcome. Morgans is concerned about the unintended consequences that would arise from the Proposal, including:-

- misleading and confusing consumers and other viewers of the information that are not financially sophisticated, due to the required contextual statements for accuracy; and
- impacting the quality of information available to ASIC to properly identify patterns, trends and problem areas, and to take appropriate regulatory action where necessary.

Further, Morgans does not support the Proposal where it would allow for the use of information provided under compulsion by licensees to ASIC, for ASIC to fulfil its role as a regulator, to be used to advance private causes of actions against the licensee.

### **Proposed alternate solutions**

Morgans is presently uncertain how the stated objectives of the Proposal, of increasing transparency, identifying areas of greater concern and allowing more specialised resource allocation, could not also be achieved by publishing aggregated industry or sector level data, without the consequences and contextual issues which arise from firm-level data publishing.

Should ASIC determine to proceed despite this position, Morgans views that any draft or proposed dashboard should be made available to licensees for consultation prior to publishing, as there may be further unintended and unforeseeable consequences of the dashboard that have not yet been considered.

Morgans is supportive of the objects of the Proposal, of improving transparency to enhance accountability, identify areas of greater concerns and allow targeted resource allocation for licensees. We are also of the view however, that transparency should be pursued in a form and manner in keeping with ASIC's objects, including to:-

- (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- (b) promote the confident and informed participation of investors and consumers in the financial system (...).<sup>1</sup>

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<sup>1</sup> Australian Securities and Investments Commission Act 2001 (Cth), Section 1(2)

Morgans has concerns that the Proposal would result in worse advice for Australian consumers, would encourage behaviours from licensees that are inconsistent with the above objects, and may result in worsening consumer outcomes, due to added confusion and lack of understanding and context about the raw data.

Supervising licensees is not a role for the consumer. ASIC is a regulatory body tasked with supervising the financial sector to improve outcomes. Morgans considers that this Proposal is in essence ASIC abdicating its responsibilities and deferring enforcement and oversight of licensees to the public. Morgans is not agreeable with this.

Morgans is a national full-service stockbroking and wealth management network with more than 220,000 client accounts, with 520 authorised representatives and 950 employees operating from offices in all states and territories and many regional areas in Australia. The services that Morgans offers to its retail clients ranges from execution-only broking services to full-service comprehensive financial planning, implementation and ongoing advice and reporting.

We have provided specific commentary in relation to ASIC's queries in the **attached** schedule. We have also set out below our concerns about the unintended consequences that may arise from the Proposal, and the effect that this may have on consumers.

### **Potentially misleading and inaccurate to consumers**

It is uncertain that the publishing of information collected by ASIC will be of any practical benefit to consumers and financial services firms in addressing the problems sought to be addressed. The proposal includes the requirement that ASIC provide explanatory information to help users understand and interpret the data elements.

CP 383 provides that one of these contextual statements may include:-

*"a statement that a large number of RS reports or IDR complaints for a firm does not necessarily suggest a higher incidence of non-compliance or consumer dissatisfaction, but may in fact reflect stronger compliance systems that can effectively identify and record non-compliance or consumer dissatisfaction;"*

It is telling that the first contextual statement that is contemplated and proposed to be provided by ASIC is a statement that the information might convey a situation which is the opposite of reality. Morgans considers that a non-sophisticated client is unlikely to properly consider, evaluate or even care about a contextual statement that follows any published data. In practicality, a statement that data should not be taken at face value calls into question the purpose of making that data available in the first place.

Where the information to be published is firm level information (c.f. individual RS or IDR level), and where the user does not obtain the requisite level of information to comprehensively review and determine merit, Morgans has concerns that the data may actually mislead users. Licensees are required to have appropriate risk management systems having regards to the nature, scale and complexity of the licensee's business. The failure to provide this context is likely to misinform recipients of the data.

It is proposed that information will not be published for individual licensees due to privacy concerns. We understand that this appears to be as a result of a conflict between the authorising legislation which allows publishing of individual licensees for the RS regime, but disallows the same for the IDR regime. ASIC has addressed this (and problems of under or inaccurate reporting) by proposing to include (as a contextual statement):-

*“a statement that no submissions for a firm does not necessarily indicate that there are no reportable situations or complaints;”*

Notwithstanding the prejudicial disparity to corporate licensees, Morgans has concerns about the integrity and usefulness of any data that is published for any practical purposes, where the data (rightfully) contains these caveats.

We are concerned that contextual statements are required to interpret the data, including statements that ‘a high number of reported matters does not necessarily indicate non-compliance or dissatisfaction,’ as well as that ‘a low number of reported matters does not necessarily indicate compliance or satisfaction.’ This nuance may not be fully understood or interpreted by users and laypersons.

The proposal includes that, ASIC may consider in future but will not include at present, information to classify the size and sector of firms. These are important contextual matters, and any absence of this information would both misrepresent the data that is being published and is likely to obfuscate any viewers of the data. It is unclear how useful any data would be to achieving the stated objects without this information.

### **Encourages non-reporting and is punitive towards strengthening controls**

As above, ASIC has recognised that contextual statements are required to understand the information, including that a large number of reported matters may mean a large number of **identified matters**, rather than of the occurrence of the matters themselves.

Licensees are obligated to report RS and IDR data to ASIC on periodic and regular basis after the matter has been identified. This information is useful to ASIC, and the original purpose for requiring licensees to provide this information to ASIC was, to both:-

- allow ASIC to detect significant non-compliant behaviours early and take action where appropriate, and allow ASIC to identify and address emerging trends of non-compliance in the industry;<sup>2</sup> and
- assist ASIC in monitoring trends, identifying emerging issues and determining regulatory priorities in the dispute resolution system.<sup>3</sup>

ASIC has a discretion to determine whether any further regulatory action is warranted or appropriate, after receipt and consideration of the information from licensees. Licensees are encouraged to strengthen compliance programs and attitudes, including to promptly identify and rectify breaches, however ASIC, as the regulator, has a broad mandate to collect information and determine, having regard to all of the circumstances, whether any reported matter justifies further intervention.

That discretion is not being applied under the Proposal prior to any publishing of information, which presently provides:-

*We will publish RS and IDR data as it is reported to us. We will not take steps to confirm or verify the accuracy of the data submitted by firms (or to confirm or verify firms’ failure to submit reports) for the purpose of data publication.*

Morgans is concerned that the Proposal will in practice result in financial firms adopting a more conservative approach to identifying and reporting matters to ASIC and reduce the ability of ASIC to gain measurable information to identify and address emerging problems. In circumstances where all reported matters will be published to the world (even in aggregate), with potential reputational and financial consequences from reporting, licensees will be incentivised to under-report circumstances.

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<sup>2</sup> Explanatory Memorandum, Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 and Corporations (Fees) Amendment (Hayne Royal Commission Response) Bill 2020 (**Reportable Situation EM**), [11.3]

<sup>3</sup> Explanatory Memorandum, Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017, [2.9]

Additionally, Morgans is apprehensive that the publication of RS and IDR data might lead to confusion regarding ASIC's responsibilities among the Australian public. As mentioned previously, ASIC should assess whether further regulatory action is necessary, based on the information provided by licensees, its priorities, and other relevant factors.

Morgans is concerned that the Proposal could either result in reputational issues for ASIC if it is decided that no further action is necessary in relation to any circumstances, or compel ASIC to act due to public perception, rather than objective circumstances.

ASIC has already noted, following a review into the RS regime in late 2024, that there were a number of poor practices prevalent among licensees, and that improvements were required to practices for identifying and reporting matters. Morgans views that the decision to publish all RS and IDR reported data may further exacerbate this problem.

ASIC is also permitted, by regulatory instrument, to target surveillance to problematic areas, or to decide that the regulatory burden imposed outweighs the benefit of receiving certain reports, where ASIC is receiving a large number of largely unproblematic breach reports for minor, technical or inadvertent breaches of civil penalty provisions, and those breaches would not otherwise be significant.<sup>4</sup> In essence, the government has acknowledged that having licensees forthcoming with data allows ASIC to better fulfil its role as a regulator, and determine the severity and consequences for the licensee of reported matters. Any context about whether any reported situation is "*for minor, technical or inadvertent breaches of civil penalty provisions, and those breaches would not otherwise be significant,*" which is reliant on determination by ASIC, would not be conveyed in the Proposal.

### **Filtering Data**

Administratively, Morgans also notes that the Proposal considers an ability for users to filter the data displayed by a number of variables. ASIC should consider the impacts of low numbers of reported matters on this ability, as this may result in information being viewable at an individual Breach/Complaint level.

Morgans views that any draft or proposed dashboard should be made available to licensees for consultation prior to publishing, as there may be further unintended and unforeseeable consequences of the dashboard that have not yet been considered.

### **International**

Morgans is not aware of the publishing of firm level complaint or reportable situation data being implemented (to this extent) in any other jurisdictions. While not strictly relevant, Morgans queries the regulatory purpose behind, and benefit of, the Proposal, particularly in circumstances where this does not appear to have been adopted, or even considered, in other jurisdictions.

### **Conclusion**

Morgans is agreeable in principle with greater transparency of IDR and RS data, to enable licensees to allocate resources to appropriate areas and to provide targeted compliance outcomes, as well as to improve the quality and accessibility of financial advice to Australian consumers.

Morgans does not consider that the present Proposal achieves this. Morgans considers that the Proposal will have the effects of:-

- confusing and misleading laypersons, consumers and users of the dashboard;

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<sup>4</sup> Reportable Situation EM [11.29]

- impacting the willingness of licensees to be forthcoming with information which will reduce the effectiveness of the regulator; and
- present the possibility for targeted or malicious private actions based on compelled disclosures;
- confusing ASIC's role with the Australian public, about expectations for regulatory action, based on incomplete and lacking contextual information,

all of which would ultimately impact the ability of Australian consumers to obtain quality, affordable and accessible financial advice.

Morgans considers that similar benefits could be obtained by publishing aggregate industry or sector level data, without the unintended consequences which will arise from publishing firm level data.

# Morgans Financial Limited

## Appendix B: Response tables

We encourage you to use these tables to respond to our proposals.

**Table 1: RS response table (feedback questions B1Q1 to B4Q1)**

<p><b>B1Q1 Do you have any comments about the proposed format of the data publication, or any suggestions for the interactive dashboards?</b></p>	<p>Morgans has concerns with the Proposal, both holistically and in relation to specific data elements. Morgas has provided information and submissions about its concerns in the attached cover letter and in the below document.</p> <p>ASIC has sought comments about the proposed format of the data publication, and of suggestions for the interactive dashboard, while providing very little information about the proposed format or the interactive dashboard. Morgans does not presently understand how the data is to be presented and aggregated, how ASIC proposes to present firm level data and restrict the ability to view situation or complaint level data, how filtering is intended to operate in practice, and other practical matters.</p>
<p><b>B2Q1 Do you have any comments on this proposal?</b></p>	<p>Morgans' preference would be that any data is not downloadable, as this presents opportunity for manipulation and/or the removal of contextual statements. Notwithstanding this however, provided that the statement that additional granularity will not be available for downloaded data is correct, Morgans acknowledges that the information would be ultimately exportable (even if manually).</p>
<p><b>B3Q1 Do you have any comments about ASIC using explanatory notes and contextual statements to assist in the interpretation of the data elements?</b></p> <p><b>B3Q2 Are there any other types of explanatory statements we should also publish, or particular issues that they should cover? If so, what are they?</b></p>	<p>Morgans agrees that explanatory statements are necessary to properly interpret the data. Morgans is concerned about the extent of explanatory notes and contextual statements necessary to qualify the data and the extent that any data may be misleading or misrepresentative. Further submissions in this respect have been provided in the cover letter.</p> <p>Further, the decision to not include contextual information about the size of licensees or the relevant sector is perplexing. Morgans considered that absolute information conveys significantly less relevant context than proportionate or relative information does. Licensees are required to have appropriate risk management systems having regards to the nature, scale and complexity of the licensee's business. The failure to provide this context is likely to misinform recipients of the data.</p>

<b>B4Q1 Do you have any suggestions on potential features that ASIC should consider in future? Please provide details, including the benefits that suggested features would provide.</b>	Morgans does not have any views of any potential features to be added to the dashboard. Morgans does consider that any proposal for further granularity of the data, or additional features which would alter the extent of information which is visible, should not take place without a consultation process about potential consequences.
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**Table 2: RS response table (feedback questions D1Q1 to D1Q3)**

<b>Data element #</b>	<b>Data element</b>	<b>Do you have any comments on the proposed data element?</b>	<b>Are there any reasons why the data element should not be published?</b>	<b>Are there any specific contextual statements that may help users to interpret the data element?</b>
RS-DE 1.1 to RS-DE 1.8	Table 1: About the licensee	<p>Morgans does not agree with any determination to withhold information as it relates to individual licensees on the basis that it may be Personal Information under the Privacy Act.</p> <p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>	Item 1 - Note 2: Data in the report is referred to at two levels, 'firm-level' and 'industry-level'. Data in the publications will be aggregated at these two levels, allowing users to view the data for all reporting firms (industry-level) and to drill down to view data for each individual firm (firm-level). Data will not be able to be viewed at the individual report or complaint level.	



Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE 2.1 to RS-DE 2.8	Table 2: Volume and nature of breaches	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		
RS-DE 3.1 to RS-DE 3.5	Table 3: Extent and impact of breaches	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE 4.1 to RS-DE 4.7	Table 4: Identification and investigation of breaches	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		
RS-DE 5.1 to RS-DE 5.5	Table 5: Compensation and remediation	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE 6.1 to RS-DE 6.6	Table 6: Rectification	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		
RS-DE 7.1 to RS-DE 7.2	Table 7: Reporting practices	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		

**Table 3: RS response table—Additional elements that you think should be published (feedback question D1Q4)**

Data element	Please provide detailed reasons why the data element should be published

**Table 4: IDR response table (feedback questions E1Q1 to E1Q3)**

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
All elements	All elements	<p>Item 57. We intend to aggregate data at the firm level.</p> <p>Item 1 - Note 2: Data in the report is referred to at two levels, 'firm-level' and 'industry-level'. Data in the publications will be aggregated at these two levels, allowing users to view the data for all reporting firms (industry-level) and to drill down to view data for each individual firm (firm-level). Data will not be able to be viewed at the individual report or complaint level.</p>	<p>A number of ASIC comments in the Proposal appear to contemplate the data being published at an individual report or complaint level.</p> <p>As an example, Item 60 provides that <i>"it is important to note that an individual complaint can cover up to three products, issues and outcome categories. There is no implied order or link between the products, issues and outcomes. Rather, all data elements recorded are taken to relate to the complaint as a whole. For example, a firm reports a complaint that is about two products, a credit card and a personal transaction account, and the complaint outcome is a monetary remedy. The monetary remedy outcome is taken to relate to both products, not one or the other."</i></p> <p>Morgans is uncertain how the data is contemplated to be presented, however where the data is to be published at a firm-level (c.f. complaint level) the products, issues and outcomes should not be associated with each other at all.</p>	

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 2.4	Complainant postcode	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>ASIC has not provided any guidance about <u>how</u> this data is to be aggregated or displayed to users (e.g. Complaints by State, LGA, Postcode).</p>	Any ability to filter or refine results by postcode should be avoided. The more granularity that is provided for this, the greater the concern of privacy related matters being disclosed.	
IDR-DE 3.1	Number of complaints	<p><i>ASIC is aware that, on its own, the number of complaints is not a reliable indicator of IDR performance. We do not intend to emphasise the number of complaints, and we may require user interaction before it is displayed in some views.</i></p> <p>Absolute numbers of complaints without context of the number of authorised representatives, the size of the licensee, etc is misleading. We are uncertain how this data is 'not going to be emphasised.'</p>	<p>Morgans considers that the number of IDR complaints (if any, even in aggregate) is confidential and arguably legally privileged (being information related to actual or anticipated litigation).</p> <p>Morgans is compelled to supply this information to ASIC, however, does not consent to disclosure of this information.</p>	<p>As earlier, absolute numbers of complaints without context of the number of authorised representatives, the size of the licensee, etc is misleading.</p> <p>We are uncertain how this data is 'not going to be emphasised.'</p>

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.7	Number of days taken to resolve the complaint	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>		
IDR-DE 3.9 to IDR-DE 3.11		<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur or how this presents any meaningful information to users.</p>	<p>E.g.</p> <p>For each product or service category there are three levels of data collected, and we propose to publish data for all three levels.</p> <p>For example, for a complaint about home building insurance, the IDR report will contain three levels of data for the home building insurance category: <u>General insurance, Domestic insurance and Home building.</u></p> <p>It is uncertain what benefit this provides to persons viewing this data or how this is intended to be viewed or displayed in practice. It is also unclear how this data will be presented where there is a small number of matters in each category.</p>	

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.12	Monetary remedy	<p>This data is intended to be aggregated prior to being presented (in order to only provide firm-level data).</p> <p>It is not clear the basis on which aggregation is intended to occur (sum, mean, median, etc) or how this presents any meaningful information to users.</p>	<p>Morgans considers that the amount of any monetary remedy which is offered to complainants (if any, even in aggregate) is confidential between Morgans and the complainant.</p> <p>Morgans is compelled to supply this information to ASIC, however, does not consent to disclosure of this information.</p>	