

Niki De Mel
Strategic Policy Advisor
Strategy Group
Australian Securities and Investments Commission
By email: BR.submissions@asic.gov.au

3 June 2021

Dear Niki

Response of IG Markets Limited and IG Australia Pty Ltd (together 'IG') to *CP 340: Breach reporting and related obligations*

We thank ASIC for the opportunity to provide our feedback on the proposals for guidance set out in *CP 340 Breach reporting and related obligations*, the *Draft Regulatory Guide 78 Breach Reporting by AFS licensees and credit licensees*, and the *Draft Information Sheet*.

IG supports the implementation of an enhanced breach reporting regime. However we believe there are significant complexities and ambiguities within the regime that require further guidance from ASIC. This could be achieved by way of additional practical examples and case studies on the areas that require extra clarity to ensure licensees adopt and implement the regime in accordance with ASIC's expectations. We discuss this feedback in detail below, in response to the CP 340 questions.

If you would like to discuss our comments further, please do not hesitate to contact me on 

Yours sincerely



Kylie Paton
Head of Compliance

CP 340 Questions

B1Q1 Do you agree with our proposed approach? If not, why not?

Yes. IG agrees with the proposed approach.

B1Q2 Are there differences in the structure or operation of credit licensees that require specific guidance on how the breach reporting obligation applies?

IG is not a credit licensee and therefore does not have any comments in response to this question.

B2Q1 Are there any specific issues, incidents, challenges or areas of concern you think we should include as examples, case studies or scenarios? If so, please provide details and explain why they should be included.

It would be beneficial for ASIC to include examples relating to the assessment of a breach of a licensee's obligation under section 912A(1)(a) to do all things necessary to ensure financial services are provided efficiently, honestly and fairly. Clear practical guidance, examples and case studies will assist licensees to assess potential breaches of this obligation in accordance with ASIC's expectations.

B3Q1 Should we include further guidance to help AFS licensees understand how the existing breach reporting obligation under s912D of the Corporations Act (as in force before 1 October 2021) applies? If so, please provide details.

It would be beneficial for ASIC to provide guidance on a scenario whereby a licensee identifies a potential breach of a core obligation that commenced pre 1st September 2021, but where the investigation is ongoing after 1 October 2021. It is unclear in this situation if the breach would need to be reported on 1 October 2021 or whether the licensee has 30 days from 1 October to report.

B4Q1 Do you agree with our proposed approach? If not, why not?

Yes. We support ASIC's proposed approach.

B4Q2 Should we include further guidance on what constitutes a 'core obligation'? If so, please provide details.

We refer to our response to B2Q1.

We would also benefit from ASIC providing a list of the obligations which are not core obligations, in addition to providing a list of the core obligations. A list of the 'non-core' obligations would be significantly easier for licensees to navigate than the large list of core obligations.

B4Q3 Should we include further guidance on how to determine whether a breach or likely breach of a core obligation is 'significant'? If so, please provide details.

We would benefit from a list of the breaches that are considered significant, in addition to a list of the obligations which do not satisfy the reportable obligations.

B4Q4 Should we include further guidance on reporting an 'investigation' to ASIC? If so, what should be clarified? Please provide examples of scenarios (where relevant).

We would benefit from ASIC including detailed examples and case studies on type of events that constitute the commencement of an 'investigation'. For example, is an investigation triggered at the point that a person responsible for investigating an incident, such a compliance officer, becomes aware of the breach?

B4Q5 Should we include further guidance on what constitutes 'material loss or damage'? If so, what are the challenges licensees face in determining whether loss or damage is material? Please provide examples of how you consider questions of material loss or damage.

Yes, it would be beneficial for ASIC to include further guidance on what constitutes 'material loss or damage'. While licensees in IG's sector may hold limited information about a client's financial situation to comply with *RG 227 Over-the-counter contracts for difference: Improving disclosure for retail investors* and the customer due diligence obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (for example, a client's earnings, savings, and source of funds used to trade IG's products), we do not have a holistic view of a client's financial situation.

The approach proposed by ASIC would require a licensee to make detailed enquires into each impacted client's personal financial situation, to be in a position to assess the potential impact of any resulting loss on an individual client. This approach is problematic for several reasons. Firstly, where a licensee is authorised to provide general advice only. In the event the licensee obtains detailed information about a client's financial situation, the licensee risks entering into personal advice territory simply by way of having that information. Secondly, the approach relies on a client being willing to provide a licensee with this information. In our experience collecting wealth information to satisfy customer due diligence and client qualification obligations, clients are often hesitant or unwilling to provide information about their wealth. Finally, in the event the breach involves a significant number of clients, it would be an exceptionally resource intensive exercise obtaining such information from each individual client impacted.

We believe a better approach would be for ASIC to provide a list of objective criteria that a licensee must consider in assessing whether a breach has resulted in a loss or potential losses that is material or immaterial.

B4Q6 Should we include further guidance on reportable situations involving serious fraud or gross negligence? If so, what are the challenges licensees face in identifying when serious fraud or gross negligence has occurred?

We believe it would be beneficial for ASIC to define 'gross negligence', to ensure that licensees are clear on the type of behaviours this term intends to capture. Detailed examples and case studies would also assist licensees in assessing whether conduct falls within the scope of ASIC's interpretation of 'gross negligence'.

B4Q7 Should we include further guidance on reportable situations about other licensees? If so, please provide details.

We do not consider any further guidance is required with respect to this matter.

B5Q1 Should we include further guidance to help licensees understand when to report to ASIC? If so, please provide details, including what guidance would be helpful and why.

We do not consider any further guidance is required with respect to this matter

B5Q2 Should we include further guidance on what may amount to 'knowledge', 'recklessness' and 'reasonable grounds'? If so, please explain what specific guidance would be helpful and why.

We refer to our response to B4Q4.

B5Q3 Should we include any additional or alternative guidance to help licensees provide reports to ASIC in a timely manner? If so, please give details.

We do not consider any further guidance is required with respect to this matter.

B6Q1 Do you have any feedback about the types of information we propose must be included in the prescribed form? If so, please provide details, and identify any issues.

We do not have any feedback to provide on this matter.

B6Q2 Should we include any other information in the prescribed form? If so, please provide details.

We do not consider that any additional information should be included in the prescribed form.

B6Q3 Do you have any concerns about the types of information in the prescribed form and whether this information can be provided within the prescribed 30-day time period? If so, please provide details.

We believe it is important that only information a licensee will have available at the time a breach report is submitted, is mandatory to complete. It should be possible to include additional or supplementary information at a later date, as a licensee's investigation progresses.

B7Q1 Do you agree with our proposed approach? If not, why not?

Yes, we agree with ASIC's proposed approach.

B7Q2 Are there any other specific areas that we should consider including in our guidance? If so, please provide details.

We do not consider any further guidance is required with respect to this matter.

B7Q3 Are there any challenges that you would face in applying our guidance to your specific circumstances (i.e. the nature, scale or type of your business)? If so, please provide details.

No.

C1Q1 to Q2Q2

IG is not a financial advisor or credit licensee and therefore we do not have any comments in relation to C1.