Stockbrokers Association of Australia

7 October 2016

EDR Review Secretariat
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

By email: EDRreview@treasury.gov.au

Dear Secretariat Team Member,

Review of the financial system External Dispute Resolution framework
Issues Paper dated 9 September 2016

Thank you for the opportunity to provide feedback on the Government's review of the financial system's External Dispute Resolution and complaints schemes.

This submission is made on behalf of the Members of the Stockbrokers Association of Australia Ltd (SAA).

For the purpose of this submission we will be commenting specifically on whether changes to the Financial Ombudsman Service (FOS) in the financial sector are necessary to deliver more effective outcomes in consideration of the existing FOS arrangements.

Whilst the SAA welcomes the Government's review of the financial system's external dispute resolution and complaints schemes and agrees with the principles outlined in the terms of reference for the review, *we do not believe that a new single external dispute resolution body (EDR) would be either an effective outcome for the industry or in the best interests of consumers.*

Reasons against creating a new EDR body/integrating existing schemes and arrangements

1. Relatively few complaints are made against Stockbroking firms compared with the total number of complaints received annually by FOS. The formation of a new EDR body would add unnecessary complexity and confusion for stockbroking clients in accessing the scheme, contrary to the purpose this review is attempting to achieve.

2. Licensed retail stockbroking firms ("licensees") are subject to licensing requirements to have in place internal dispute resolution (IDR) procedures that meet ASIC's requirements under ASIC Regulatory Guide 165. As part of these requirements, licensees are required to disclose their IDR procedures to their clients via their Financial

Services Guide (FSG). However most firms inform their clients of their internal complaints handling procedures through a number of means, such as via their website and various forms of client documentation, as it is beneficial for both the licensee and the client to resolve complaints in accordance with their IDR process from a cost, time and client relationship perspective.

3. The creation of a new EDR body could potentially encourage clients to pursue the EDR process in preference to the IDR process.

4. If you accept our view that IDR processes are beneficial for both clients and the licensee, encouraging clients to go down the EDR path is not going to be in their interests. It will be a mirage. Far better for clients to get a more immediate and certain outcome following the IDR process than being encouraged to dream of Nirvana.

5. As FOS has significantly improved their case review and management in recent years, creating a new EDR body would invalidate this enhanced process and the continual improved expertise gained by FOS' case managers.

6. A new single external dispute resolution body would be yet another regulatory cost burden to be worn by the industry, and ultimately consumers.

   Please consider this point very seriously.

   Members of the Stockbrokers Association are already struggling to survive in the face of huge regulatory cost burdens.

   No doubt, Stockbrokers will be asked to contribute to the costs of any new single external dispute resolution body.

   Additional costs could well be the straw that breaks the camel's back, driving small to medium-sized firms out of the industry or forcing mergers. Competition will reduce, remaining firms will have stronger pricing power and clients will have less choice.

   Ultimately, the reduction in competition and the reduction in choice will mean that clients are the losers.

   If the government wants to see the impact of Australia's costs and regulatory burdens on the financial services industry in Australia, just look at the rate at which global investment banks have shut up shop in Australia and moved to Singapore or Hong Kong! This is a very serious issue for Australia, because as firms shut up shop, the industry loses skills, consumers lose choice, and they are exposed to concentrated market pricing power.

Positive and negative features of FOS

1. **Length of time for FOS to decide on matters** - Although it is noted that FOS have significantly reduced the time taken to resolve disputes under its new process and have

accepted all open disputes since 30 June 2015, there still remain delays due to slow responses from both the claimant and the Service Provider in the information gathering stage. Although this is not necessarily attributable directly to FOS, it highlights the benefits for the IDR process to be used over the EDR process.

2. **Acceptance of unsubstantiated claims** - Although FOS have the powers to exclude disputes it considers to be frivolous, vexatious or lacking in substance (under FOS Terms of Reference paragraph 5.2), there still remain a number of frivolous and vexatious low value claims that FOS accept. This results in firms spending more time and money on disputing such claims, so quite often it is more cost effective for firms to settle, despite the client's unsubstantiated claims.

   Recently, a Stockbroking firm conducted a training session with a group of FOS case Managers, for the purpose of educating them in a variety of Stockbroking Advice specific areas. The SAA welcomes this continued form of proactive training with FOS and believes the Government's funding would be better spent on training EDR case managers rather than forming a joint EDR body.

3. **Inconsistency of decisions –** As FOS is required to treat each claim on its own merits, this often leads to inefficiencies and judgements contrary to previous similar cases. There would be a benefit for both FOS Members and clients, for FOS to be required to substantiate why their judgement is different from a previous similar case and/or for FOS to develop a case precedent-style framework.

Reasons against increasing FOS' monetary limits

The SAA does not agree with FOS' proposal to consider disputes involving larger claims (ie from $500,000 to $2 million) nor increasing the award of higher compensation (ie from $309,000 to $2 million) as most claims are at the lower end of the scale.

In fact it would be more beneficial to introduce a minimum claim amount in an attempt to reduce the number of unsubstantiated claims that squander the resources of both FOS and its Members.

Benefits of Internal Dispute Resolution processes

The SAA's view is that licensee IDR processes provide better outcomes for clients for the following reasons.

1. IDR processes are more effective in resolving client disputes as the licensee's complaints handling staff are more adequately experienced and knowledgeable in regard to the firms and markets developing financial services and products compared to FOS' case managers.

2. As licensed stockbroking firms are subject to ASIC's requirements to meet minimum IDR processes and industry best practice under the Australian Standard on Complaints Handling, this fosters consistent IDR arrangements in the industry resulting in comparable outcomes for clients.

3. Both licensees and clients benefit from the resolution of complaints via the IDR processes over the use of the EDR scheme given the more favourable time and cost benefits for both parties.

4. Clients are sufficiently notified of how to access a licensee's IDR process given the regulatory requirements on licensees to disclose their IDR processes to their clients.

5. The IDR process provides a continual opportunity for licensees to review their practices and remediate any issues, thereby mitigating future client complaints. It also enables firms to maintain an ongoing relationship with their client compared to the EDR process which can often become quite vexatious for both parties resulting in a severed relationship and loss of client trust and confidence in the financial services sector.

Regulatory oversight of EDR Schemes and complaints arrangements

The SAA considers the existing regulatory oversight by ASIC and the ASX on members IDR processes to be sufficient, given the ongoing direct monitoring and supervision reviews conducted by both bodies on licensees. These reviews enable SAA Members to have an increased awareness of any existing or potential issues regarding their IDR arrangements and any potential client complaints. Such reviews and regulatory scrutiny enable SAA Members to be more proactive in addressing identified issues, therefore the SAA does not endorse any increased or modified regulatory oversight.

The SAA believes there is merit in ASIC having responsibility in overseeing the SCT to alleviate any potential double claims.

Conclusion

1. The SAA supports the Government's intention to reduce the complexity of complaints handling for clients. Whilst there remain some areas for improvement in FOS' EDR processes, we believe that FOS does in fact deliver effective outcomes for clients, having regard to efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs.

2. The SAA does not consider increasing the monetary limit on the claims that FOS can assess and on the amount of compensation it can award to be necessary nor beneficial for the stockbroking industry. On the contrary, it would be more beneficial to industry to introduce a minimum claim amount to reduce the number of unsubstantiated claims.

3. Stockbrokers, as licensees are already subject to an appropriate amount of regulatory oversight and scrutiny. Furthermore, our Members are continually taking steps to improve their complaints handling processes for the benefit of their clients and their firm's efficiencies.

4. Additional regulatory cost burdens will force industry consolidation, reduce competition and ultimately disadvantage clients.

5. The SAA supports the continued regulatory and industry focus on the use of IDR processes given the many apparent advantages over following the EDR process, to resolve client disputes.

6. Instead of forming a new single EDR body, we urge ASIC and the Government to allocate funding to train case managers. This will benefit consumers by resulting in a more efficient and equitable EDR framework.

We thank you again for the opportunity to present our views and would be pleased to discuss further with you.

Yours sincerely,

ANDREW GREEN
Chief Executive