Stockbrokers
And Financial Advisers
Association Limited

18 June, 2019

Australian Financial Complaints Authority
GPO Box 3
MELBOURNE VIC 3001

By email: submissions@afca.org.au

AFCA RULE CHANGE CONSULTATION - IDENTIFICATION OF FIRMS COMMENTS BY STOCKBROKERS AND FINANCIAL ADVISERS ASSOCIATION (SAFAA)

We refer to the Consultation Paper dated 18 March 2019 on the proposed Change to Rule A.14.5 authorising AFCA to identify the name(s) of the Licensee/s involved in a Determination by AFCA ("the Consultation Paper").

SAFAA has consulted members, and we set out below our comments on the Proposed Rule Change.

Fundamental Opposition to the Proposed Rule Change

By a large majority, the feedback received from SAFAA members was unanimously of the view that the proposal by AFCA to identify the licensees in Determinations is unnecessary, and is against the spirit underlying the introduction of external dispute resolution in the first place.

SAFAA is disappointed at the framing of the three Consultation Questions in the Paper. The key issues are not whether the proposal satisfies AFCA's transparency requirements, and whether or not the proposed Guidelines explain the Rule satisfactorily. Rather, the key question is whether the change should be proposed at all.

The primary reason for introducing EDR was to provide quick and low cost dispute resolution to retail clients of licensees. It was not the intention that a separate Court system be introduced.

The fact that decisions can be made on the basis of "fairness" and without regard to legal principles is, whilst a potential criticism of the fairness of the scheme to licensees, also evidence that the essential output of the scheme was always intended to be the resolution of disputes. It was not meant to be the creation of another legal database.

It was always our understanding that anonymity was the "trade-off" for this arrangement. Decisions have the potential to have reputational impact on licensees, and the fact that a determination may be made against a licensee even though it may not have been on the basis of any legal liability creates the potential for unfairness through inferences being drawn that might not be fair.

It is more appropriate to consider External Dispute resolution along the lines of dispute resolution clauses in contracts, under which parties agree to have their disputes resolved by a private body or adjudicator, rather than by resorting to the courts. Such disputes are also not made public.

We note that FOS has for many years published statistical reports, including at the industry sector level. We question why this is not considered sufficient transparency for the purposes of informing the market about dispute trends and sector performance.

We question the value of identifying Firm A in, say, 3 determinations, when that firm may have 40,000 retail clients on their books, as opposed to firm B in one case, where that firm might have only 500 clients.

Further, there is the additional question of the age of disputes. By the time that a claim is brought and determined, the events in question are quite commonly many years old.

In our submission, drawing any inferences from the identity of a firm in a determination is likely to mislead the public rather than inform them.

We would be happy to discuss any issues arising from these comments, or to provide any further material that may assist. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au

Yours sincerely,

Andrew Green
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