



2 August, 2018

Mr Michael Ridgway  
Executive General Manager –  
Corporate Strategy & Services  
Financial Ombudsman Service Australia

By email: [MRidgway@FOS.org.au](mailto:MRidgway@FOS.org.au)

Dear Michael,

## MEETING WITH SAFAA – FOLLOW-UP ISSUES

I refer to the recent meeting between you and John Stringer representing FOS, and James Karpouzis, from Crestone Wealth Management, and Gillian Gilmore from the Stockbrokers and Financial Advisers Association (SAFAA).

At the outset, may I thank you for meeting with my colleagues.

There is one issue, discussed at that meeting, which we would like to follow up. This relates to the inclusion of wholesale clients as persons eligible to bring a claim under the proposed AFCA Rules.

We wish to propose an amendment to the AFCA Rules that we believe could satisfy all the competing objectives, as follows (changes shown highlighted in red),

*C.1.5 AFCA must exclude:*

- a) A complaint solely about the investment performance of a financial investment, other than a complaint concerning non-disclosure or misrepresentation.*
- b) A complaint relating to the management of a fund or scheme as a whole.*

- c) *A complaint against the trustee of a Self Managed Superannuation Fund in respect of their conduct as trustee of that fund.*
- d) *A complaint relating to the management as a whole of a RSA Provider or insurer, the RSA Provider's or insurer's business or the RSA Provider's or insurer's investments.*
- e) *A complaint made by a Complainant that is not a retail client as defined in the Corporations Act, unless the Complainant is a Small Business.*

*For the avoidance of doubt, rules C.1.5 (a), (b), ~~and~~ (d) and (e) apply to a Superannuation Complaint.*

We note the comments made at the meeting regarding the Government's objectives with respect to small business. For this reason, and without wishing to go down the path of debating that subject further, we have drafted the proposed amendment to take that into account.

SAFAA raised the issue of claims by Wholesale Clients in our [Submission of 29 June 2018 to AFCA](#) in relation to the Proposed AFCA Rules.

We understand that in drafting the proposed rules, AFCA has adopted similar wording to the existing FOS Terms of Reference (paragraph 4.1).

At the time that FOS extended its jurisdiction to include Wholesale clients within its jurisdiction, SAFAA (under its former name SDIA) objected to this.

SAFAA accepts the rationale behind external dispute resolution, and members who provide financial services to retail clients accept that membership of an approved EDR scheme is a condition of doing business.

However, the requirement in the Corporations Act for licensees to belong to an EDR scheme was introduced specifically with retail clients in mind. It was not a requirement when dealing with other clients. *Requiring licensees, as a consequence of becoming a member of FOS, to also be required to deal with claims from wholesale clients within the scheme, goes beyond the policy inherent in the legislation.* Parliament did not mandate this outcome.

Whilst this may have been the result of the broadening of the FOS Terms of Reference, there is no reason why AFCA should consider it necessary to perpetuate this state of affairs under its proposed Rules.

We are aware that FOS reserved a discretion to decline to hear a claim from a wholesale client, however this does not address the issue, particularly, as we understand it, FOS has generally refrained from exercising its discretion to refuse a wholesale client claim.

We do not know what position AFCA has reached in relation to submissions that have been received on the Proposed Rules. As mentioned, SAFAA raised this issue in its Submission of 29 June.

We would commend the wording above as an appropriate amendment to the AFCA Rules.

In our view, this amendment would more closely reflect the policy underlying the legislation, and at the same time give effect to Government policies designed to protect small businesses.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andrew Green". The signature is fluid and cursive, with a large initial "A" and "G".

**Andrew Green**  
**Chief Executive**