

From the Desk of Director Marija Pajeska



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Response to Consultation Paper 311 – Internal dispute resolution: Update to RG 165

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to ASIC in respect of Consultation Paper (CP) 311 – Internal dispute resolution: Update to RG 165.

ASDAA represents the interests of its members, who are from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors, or employees, of small to medium sized firms which hold an Australian Financial Services Licence (AFSL), but are not a Participant Member of the Australian Stock Exchange.

Our general comments are:

1. We feel that ASIC needs to send a message to the entire industry which focuses on the promotion and strengthening of the financial services consumer protection framework. The key two elements being:
 - reinforcing the requirement for financial services providers to provide financial services in a fair, honest and professional manner;
 - actively educating consumers of financial services (ie. the Australian public) about financial markets and the fact that profits and losses can be made as a result of movements within the market, ie. there is a risk that losses can be made so initial investments are never secure; and
 - the mere fact that a loss has been incurred does not mean that the loss was incurred as a result of actions undertaken by the financial service provider, losses can be a function of movements in the financial market and making a complaint on the back of losses resulting from movements in the financial market places unnecessary pressure on dispute resolution schemes.

ASIC has obligation and duty of care to educate the Australian public about its own responsibilities when investing in financial markets and financial products. At the end of the day, for education to be useful you not only need to ensure the standards are appropriate for financial service providers you also need to ensure that users (ie. consumers) are equipped with the appropriate tools to make informed decisions.

2. We appreciate and understand that ASIC needs to ensure that it is legally able to collect the data proposed to be recorded in the IDR reports and to ensure that the law allows a financial firm to comply with its obligation to provide the IDR data to ASIC without inadvertently breaching the Privacy Act, hence why there may be a need for a legislative instrument.

However, ASIC needs to ensure that the data it is seeking to collect is relevant and that the benefits of obtaining such data outweigh the costs incurred by a financial firm in order to comply with the requirements. ASIC must not lose sight of the primary objective which is to develop and maintain the financial services consumer protection framework which encompasses the laws, regulations and institutional arrangements that safeguard consumers in the financial marketplace.

For ASIC to argue that the collection of such data will assist in strengthening the consumer protection framework ASIC needs to be in a position to use that data not just collect it and it collect dust. Therefore, we encourage ASIC to assess the purpose and relevance of collecting certain data, for example, data relating to consumer demographics. We question how such data will assist with strengthening the financial services consumer protection framework.

3. We note that ASIC intends to change the IDR requirements such that a financial firm will be obliged to record and report complaints resolved to the complainant's satisfaction within 5 business days.

ASIC needs to be aware that, in most cases, such complaints (especially those received by financial firms relating to trading errors) are received verbally and resolved verbally whereby no written communication is exchanged between the parties. We question why ASIC requires such information as most complaints that fit into this category are simple in their nature and are genuine errors.

The cost of changing policies and procedures to ensure that all complaints are recorded and reported will not add any value to ASIC's assessment of complaints nor will it strengthen the financial services consumer protection framework. The requirement to record and report complaints should be retained as per current requirements to record complaints (ie. complaints resolved to the complainant's satisfaction within complainant's satisfaction within 5 business days do not need to be recorded) or alternatively a significance measure should be added, similar to that applied for breach reporting (ie. a financial firm is required to record all complaints and only report significant complaints).

We remind ASIC that there is such a thing as too much data, and unless the systems used by ASIC are effective, important issues may be missed and the whole exercise becomes redundant.

4. We agree with the statement included in RG 165.15 of Attachment 1 of CP 311: Draft updated RG 165 from the Ramsay Review's Final Report which states:

'Effective IDR benefits both firms and consumers. IDR is an important element of financial firms' overall relationship with their customers and is the primary avenue for aggrieved consumers to seek redress. Pressure on [external dispute resolution] is reduced when complaints are resolved directly between firms and their customers.'

However, ASIC needs to be mindful of the fact that financial firms will incur increased costs as a result of the proposed changes. Hence we ask the question as to whether those increased costs will inadvertently result in higher pressure being placed on the external dispute resolution scheme (ie. AFCA) as it becomes more cost effective to resolve complaints through EDR as opposed to IDR.

5. We understand the principles that ASIC has outlined in RG 165.16 of Attachment 1 of CP 311: Draft updated RG 165 however are of the view that ASIC itself has a duty to cultivate an organisational culture that welcomes feedback and values complaints. It has been our experience that ASIC welcomes feedback and instead of using the feedback to improve the delivery of its services to financial firms and consumers it either does nothing with that feedback to improve the situation for the industry or alternatively changes its KPI's to improve the appearance of ASIC meeting the requirements of industry.
6. We are of the view that ASIC should lead by example. Attached as Annexure B is a copy of ASIC's Complaint Management Policy (which is available on ASIC's website <http://download.asic.gov.au/media/3343236/complaint-management-policy-for-external-publishing-final.pdf>). We feel that ASIC should:
- improve its website to ensure that it is easier and more visible for someone searching ASIC's website to be able to find out information about how to lodge a complaint about ASIC and the delivery of its services;
 - adopt the IDR Standards it has drafted in Part F of Attachment 1 of CP 311: Draft updated RG 165 on the basis that a consumer who has received a financial service from an unlicensed individual or firm has only one avenue to complain and that is via ASIC;
 - provide contact details for a senior manager within each department or the complaints manager of ASIC that members of the public and industry can contact to lodge their complaint knowing that the person is there to hear, listen and act on the complaint;
 - provide contact details for the independent body that users of ASIC's services can complain to about the services delivered by ASIC, including their contact details;
 - improve transparency of ASIC's services by providing a public report on complaints received by ASIC regarding its services and the resolution of such complaints;
 - ensure that all staff members of ASIC are aware of ASIC's complaints management policy and adhere to it;
 - update its complaints management policy taking into consideration AS/NZS 10002:2014 and the IDR standards it has drafted in Part F of Attachment 1 of CP 311: Draft updated RG 165.

Unfortunately it has been our experience that when issues arise with ASIC:

- there is no defined process or clear point of contact that complaints can be lodged to regarding the delivery of services by ASIC;
- Senior managers regularly invite members of the public to raise issues/ lodge complaints however we have found that:
 - finding the senior managers contact details has been extremely difficult;
 - no acknowledgement of receipt is given by the ASIC staff member so you don't know whether they have actually received the email or letter outlining the issues or complaint; and
 - at times you receive no communication or details of the investigation undertaken or ASIC's understanding of the issues raised and their findings.
- informal responses are provided to resolve the issue/ complaint.

We are of the view that ASIC has a responsibility to consumers and financial firms to ensure its complaints management policy, including its procedures, documents, policies, resources, governance and arrangements are adequate to manage complaints

7. We are of the view that the first sentence of RG 165.30 of Attachment 1 of CP 311: Draft updated RG 165 is incorrect. We note that ASIC states that

'AFS Licensees' IDR processes must cover 'complaints' against the licensee: see 912A of the Corporations Act.'

Section 912A(2) states:

To comply with this subsection, a dispute resolution system must consist of:

- (a) an internal dispute resolution procedure that:
 - (i) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence; and

Therefore, we are of the view that the first sentence of RG 165.30 of Attachment 1 of CP 311: Draft updated RG 165 should read:

AFS Licensees' IDR processes must cover 'complaints' against the licensee in connection with the provision of all financial services covered by the licence: see 912A of the Corporations Act.

This puts into context what is considered a complaint and must be covered by an AFS Licensee's IDR process.

It should be at the AFS Licensee's discretion as to whether or not it uses its IDR process to resolve other complaints (ie. those not related to provision of financial services), similar to the standards set for credit licensees.

8. We are of the view that RG 165.35 of Attachment 1 of CP 311: Draft updated RG 165 should also include examples of platforms, websites and forums through which anyone can express their dissatisfaction about another party

without even receiving a service or being issued a product by that party. A financial firm should only be responsible for reviewing complaints pursuant to its IDR process if the complaint was lodged through a social media platform belonging to the financial firm and this should be clearly articulated in RG 165.35 of Attachment 1 of CP 311: Draft updated RG 165.

9. We refer to Table 2 in Part C of Attachment 1 of CP 311: Draft updated RG 165 and the IDR data dictionary. We are concerned about some of the fields of data that ASIC is seeking a financial firm to report as they appear redundant and may in some instances replicate data that ASIC already has. If ASIC expects a financial firm to have efficient systems in place then industry expects ASIC to similarly have efficient systems in place and remove the need to continuously provide data to ASIC which it should already have. Further details are provided in the following tables:

Financial Firm identifying information

Data element	ASDAA comment
Ultimate holding company (UHC) name	This is information that ASIC should already have in its own database and it would be more appropriately collected through the ASIC industry funding annual return (business activity metrics).
UHC's ABN	
Financial firm's primary business sector	
Financial firm's primary business subsector	

Complainant demographics and Table 2 of Attachment 1 of CP 311: Draft updated RG 165

Data element	ASDAA comment
Complainant gender	We appreciate ASIC's need for data however we fail to see how any of this information will add value to ASIC's use of the data to target ongoing surveillance and enforcement activities or any information provided to the public. This information may not be readily available to all financial firms or if it is available, it may not be available in an easily reportable format. ASIC also needs to be mindful of the discriminatory nature of such data as we transition into an era where gender is not recorded on birth certificates. We further note that the requirement to provide such data to ASIC along with details of the complaint will inadvertently lead to a breach of the confidentiality requirements set out in RG 165.181 and RG 165.182 of Attachment 1 of CP 311: Draft updated RG 165.
Complainant age	
Aboriginal or Torres Strait Islander descent	
Complainant geographic state	

Complaint information

Data element	ASDAA comment
Complaint issue	We note that this is a drop down box with Codes. ASIC needs to ensure that multiple selections will be acceptable as more often than not a complaint will cross over more than one code.
Description of outcome and/or remedies	We note that ASIC requests information about complaint remedy in points 35 and 36 and this information is based on ranges, which we think this is acceptable. However to request further information about outcomes and/ or remedies which are subject to confidentiality agreements between the financial firm, a PI Insurance company and the complainant is unreasonable and may lead to privacy issues and potential breaches of confidentiality.

Table 2 of Attachment 1 of CP 311: Draft updated RG 165

Data element	ASDAA comment
If referred back from AFCA <ul style="list-style-type: none"> • EDR status • EDR reference number of case ID code • EDR date 	The wording 'If referred back from AFCA' should be removed and replaced with 'Complaints escalated to AFCA' or something similar as whether or not it has been referred back is not relevant.
Description of complaint from complainant's perspective	The description of the complaint is a description of the complaint regardless of which perspective one is considering when the person completing the data in the Complaints register is the same person. Essentially this is the financial firms understanding of the complaint and the issues raised. To have to record this information twice adds no value and is redundant.
Complaint issue	

10. We understand the need to provide guidance regarding the content of the IDR response however we feel that the information contained in RG 165.75 of Attachment 1 of CP 311: Draft updated RG 165 is ambiguous and can be challenged on the basis that the financial firm did not accurately identify and address the issue. Therefore, we are of the view that this should be restricted to the financial firms understanding of the complaint. What ASIC needs to understand is that clients, for whatever reason, change the nature of their complaint as the complaint progresses through the complaint resolution process and at times after the fact when the complaint progresses to AFCA. RG 165 should be clear that the IDR response should clearly set out the issues the financial firm has understood to be the basis of the complaint, that way giving the complainant the opportunity to clarify if they feel they have been misunderstood.
11. We feel that RG 165.83 of Attachment 1 of CP 311: Draft updated RG 165 is unfair and unreasonable. It gives the complainant the opportunity to lodge a basic complaint highlighting simple issues and then towards the end of the 30 day period raise further more complex issues thus making it nearly impossible for the financial firm to review, assess and resolve the complaint in a fair and efficient manner. Under the Corporations Act 2001 ASIC has the duty and responsibility to promote fairness, honesty and professionalism by those who

provide financial services. By limiting a financial firms ability to properly and thoroughly review a complaint and assess all the relevant information in no way promotes the delivery of fair, honest and professional financial services.

12. We note that Part E titled 'Systemic issues' of Attachment 1 of CP 311: Draft updated RG 165 discusses the importance of Board and Executive Committee reporting and that such reporting should include metrics and analysis of consumer complaints. In its guidance ASIC has failed to recognise that a large portion of financial firms are small businesses which do not have Boards or Executive Committees and hence are unable to comply with such requirements. As such, it is recommended that ASIC provide guidance which is relevant to all financial firm types and structures and as such should update this section to be more applicable taking into consideration the different corporate structures and costs of compliance.
13. We are concerned with the standards set out in Part F titled 'IDR Standards' of Attachment 1 of CP 311: Draft updated RG 165 as they come across as minimum prescribed terms as opposed to providing ASIC guidance. If the intent of a regulatory guide is to provide ASIC guidance then the use of the word 'must' is inappropriate. ASIC should be providing best practice guidance to encourage firms to adopt certain minimum standards rather than telling firms how to run their business. It is not ASIC's duty to tell a financial firm what must be included in job description, induction programs, etc, these are part of the day to day operations of a financial firm which the financial firm is responsible for setting and defining. It's ASIC's duty to provide best practice guidance in an effort to improve IDR processes adopted by financial firms which will consequently reduce pressure on EDR.
14. We note that ASIC has not included a Regulatory and Financial impact statement (RIS) in the consultation paper. According to the Australian Government Department of the Prime Minister and Cabinet a 'RIS is required for all measures that seek to impose mandatory obligations on business and the community, including codes and advisory instruments for which there is a reasonable expectation of widespread compliance.'

We are of the view that taking into consideration the impact that the proposed changes will have on financial firms and consumers both from a practical point of view and the costs of compliance, ASIC had a duty of care to include the RIS in the consultation paper.

15. An AFS Licensee should have the discretion to apply IDR standards to Small Business complaints just like a credit licensee, ie. at its discretion. The implications and consequences for a small business arising from a reclassification from wholesale to retail may give rise to other issues such as:
 - Retail clients being invested in wholesale products which based on the re-definition of small business they are unable to invest in;
 - As a result clients may need to liquidate certain investments which only wholesale clients can hold and consequently suffer losses leading to more complaints.

16. We note ASIC's comment in the CP 311, paragraph 42:

'We are also concerned about the impact current complaint identification practices could have on the integrity of data provided to ASIC under the IDR data reporting regimes'

We remind ASIC that as per RG 165 the importance of IDR:

'RG 165.13 Consumer and small business access to fair, timely and effective dispute resolution is an essential part of the financial services consumer protection framework.'

If a client makes a complaint verbally or advises a financial firm of an error which is resolved within a short period of time to the client's satisfaction then the financial firm has met its legal obligations and met the requirements of RG 165.13 which is the main reason for having an IDR process.

ASIC is being unfair and unreasonable in placing its data analysis needs and requirements ahead of the client protection framework by requiring a financial firm to meet unnecessary procedures in resolving a complaint (ie. putting things in writing, recording of data) when clearly the client and the financial firm are satisfied that the complaint/ issue has been adequately handled.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email brad@asdaa.com.au.

Yours Sincerely

Marija Pajeska
Compliance Director

Annexure A: Response to ASIC Questions

Definition of 'complaint' – AS/NZS 10002:2014

B1 proposal: ASIC proposes to update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014. It sets out the following definition of 'complaint' at p. 6:

[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

The AS/NZS 10002:2014 definition expands the concept of 'complaint' to include expressions of dissatisfaction made 'to or about' an organisation. We consider that this should capture complaints made by identifiable consumers on a firm's own social media platform(s).

	ASIC Question	Response
B1Q1	Do you consider that complaints made through social media channels should be dealt with under IDR processes?	<p>No we do not agree that social media platforms are an appropriate tool to be used by anyone to make a complaint. Social Media platforms are usually hosted by third parties which are based outside of Australia and subject to different rules and regulations and gives rise to various privacy, confidentiality and legal issues.</p> <p>However, if a financial firm chooses to provide an avenue within their social media platform for consumers to make complaints then they should have a process in place that allows them to review such complaints through the IDR process and take them offline to investigate and resolve.</p> <p>We do not feel that it is appropriate for a government body or regulator to be seen to be promoting the use of social media platforms as an appropriate tool to make and resolve complaints.</p> <p>Many people place comments on social media platforms which are based on gossip, hearsay and/ or assumptions and at times are solely placed there to tarnish the reputation of another party.</p> <p>Complaints should be taken seriously by all parties involved and if a person has a legitimate complaint about the financial services or financial products offered/ provided to them they should be contacting the financial firm directly and failing that contacting AFCA.</p> <p>AFCA has proven itself to be a consumer centric organization and it is a free service offered to consumers so no one should have any issue communicating to AFCA.</p> <p>We also note that AFCA has a social media page on facebook and this is not provided as an option for making complaints via.</p>

	ASIC Question	Response
B1Q1 cont..	<p>If no, please provide reasons. Financial firms should explain:</p> <p>(a) how you currently deal with complaints made through social media channels; and</p> <p>(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.</p>	<p>The appropriate course of action should be:</p> <ul style="list-style-type: none"> • financial firms that have a presence on social media should encourage any person who raises an issue to contact the financial firms Complaints Manager directly; • once the person has contacted the financial firms Complaints Manager directly then the matter should be dealt with under the financial firms IDR process; • if the person does not wish to contact the financial firms Complaints Manager then the financial firm should be able to contact a specific department within AFCA and/ or ASIC that can deal with the person as an independent third party. <p>We feel that ASIC should work with financial firms to ensure that the internet is not used as a platform to disparage a financial firm's reputation and where a complaint is legitimate then refer the complaint to the financial firm to investigate. After all ASIC is already scanning the information made available on the internet, adding a few extra key words should not be difficult. We also wish to raise the issue of compliance cost. To require a financial firm to accept complaints raised via social media would require a financial firm to allocate human resources to scanning the entire web for detrimental comments made about their services through their social media platform and/ or an external platform.</p> <p>The costs associated with this would be ridiculous and we are sure that ASIC would agree that the resources it has allocated to the monitoring of marketing material released on the web are currently not sufficient to allow ASIC to say, without any reasonable doubt, that its team is capturing all marketing material which is misleading and/ or deceptive or unlicensed activity engaged by persons or companies (to name a few matters that they would be monitoring for). If ASIC can't achieve its objectives how can a small financial firm with no presence on social media possibly comply with this requirement, reality is it can't and larger financial firms would struggle to as well.</p> <p>On this basis we are of the view that the definition of a complaint should exclude issues, feedback, inquiries, matters or complaints raised on external platforms. However, the standards should recommend that financial firms pro-actively deal with any matters they may identify from time to time.</p>

Definition of ‘complaint’ – Additional guidance

B2 proposal: ASIC proposes to introduce additional guidance in draft updated RG 165 to clarify:

- (a) the factors a financial firm should, and should not, consider when determining whether a matter raised by a consumer is a complaint; and
- (b) the point at which a complaint must be dealt with under a financial firm’s IDR process.

See draft updated RG 165 at RG 165.32–RG 165.37 at Attachment 1 to this paper.

ASIC Question		Response
B2Q1	Do you consider that the guidance in draft updated RG 165 on the definition of ‘complaint’ will assist financial firms to accurately identify complaints?	No as ASIC has not really explained or defined who a complainant is. At the moment it appears that anyone can lodge a complaint such that the financial firm is obliged to review the complaint pursuant to the IDR process. RG 165 should be specific to complaints received from or on behalf of a customer of the financial firm and it should only be compulsory for such complaints to be subject to the requirements set out in RG 165.
B2Q2	Is any additional guidance required about the definition of ‘complaint’? If yes, please provide: (a) details of any issues that require clarification; and (b) any other examples of ‘what is’ or ‘what is not’ a complaint that should be included in draft updated RG 165.	We do not feel that the list provided in RG 165.35 is adequate as ASIC has failed to address matters such as: <ul style="list-style-type: none"> • products or services which are not a financial services, financial product or credit activity; • complaints about staff which are unrelated to the provision of a financial service or credit activities; • complaints about the handling of a complaint should be limited to complaints relating to the provision of financial services, financial product or credit activity. One could argue that this is obvious however taking into consideration historical determinations made by External Dispute Resolution Schemes, ASIC needs to be clear about what RG 165 is to capture by the definition of a complaint to ensure that AFCA does not take into consideration matters which fall out of its jurisdiction as a result of ambiguous definitions or conclude a systemic issue has arisen due to the ambiguous nature of RG 165. We feel that the commentary made relating to social media should be a recommendation and not an expectation. Further details relating to our views on social media complaints are provided in response to B1Q1.

Definition of small business

B3 proposal: ASIC proposes to modify the definition of 'small business' in the Corporations Act to align it with the small business definition in the AFCA Rules:

A Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.

ASIC Question		Response
B3Q1	Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.	<p>The current definition of small business as defined in Section 761G(12) of the Corporations Act is:</p> <p>“small business” means a business employing less than:</p> <p>(a) if the business is or includes the manufacture of goods – 100 people; or</p> <p>(b) otherwise – 20 people.</p> <p>This definition has a direct impact on whether or not the financial service is provided to a client as a retail client under Section 761(7)(b) and 761(12) of the Corporations Act :</p> <p>The issue that arises is that a small business that is defined as a wholesale client as a result of the application of Section 761(7)(b) of the Corporations Act will not have received any disclosure documents or any other documentation required to be entered into or given to a retail client under the Corporations Act. Furthermore these clients may have invested in financial products which are offered to wholesale clients and such financial product issuers do not need to give the same disclosure as issuers of financial products offered to retail clients.</p> <p>It is our understanding that the definition used by AFCA for a small business was implemented to ensure that a small business has an alternate forum to resolve a dispute with a financial firm other than the court system.</p> <p>We feel that the changes made within the AFCA Rules have adequately achieved this and that no changes to the Corporations Act are required as the proposed changes will complicate things rather than clarify.</p>

Recording all complaints received

B4 proposal: ASIC proposes to update RG 165 to require financial firms to record all complaints, including those that are resolved to a complainant's satisfaction at the first point of contact.

Note: Firms will not, however, be required to provide an IDR response for complaints resolved to a complainant's satisfaction within five business days of receipt.

ASIC Question		Response
B4Q1	Do you agree that firms should record all complaints that they receive? If not, please provide reasons.	<p>We do not agree with the proposed changes as the sole purpose of the proposed changes appears to be IDR data reporting to ASIC.</p> <p>If the current definition is retained the data reported to ASIC will be just as complete, reliable and useful.</p> <p>The main issue is the fact that usually complaints/ issues that are resolved within 5 days are made by clients verbally and resolved through verbal communication.</p> <p>The client is not required to provide any supporting documentation, nor are they required to provide any written communication to outline the issues of their complaint.</p> <p>The complaint is usually received and resolved by the client's primary contact person and the resolution of the complaint is based on addressing the client's needs and securing the longevity of the client's business.</p> <p>The person who is responsible for maintaining and updating the complaints register is not involved in the complaint and would have to rely on a staff members recollection of the complaint without having any supporting documentation or formal agreement as to the resolution of the complaint.</p> <p>By amending the requirement such that a record needs to be maintained of all complaints in the format prescribed by ASIC will mean that most of these complaints will then need to be formalized and an independent person will need to be involved to ensure the records are accurate and that supporting documentation is available for review as and when required.</p> <p>This will not add any value to the consumer protection framework in fact it will most likely make it more uncomfortable for consumers as they will need to formalize their complaints, in addition to increasing costs for the financial firm.</p>

Recording a unique identifier and prescribed data set for all complaints received

B5 proposal: To facilitate the effective operation of the IDR data reporting regime, ASIC proposes to require all financial firms to:

- (a) record an identifier or case reference number for each complaint received. The identifier must be unique to each complaint and not be reused by the financial firm (see draft updated RG 165 at RG 165.58 at Attachment 1 to this paper); and
- (b) collect and record a prescribed data set for each complaint received (see draft updated RG 165 at RG 165.61–RG 165.62 at Attachment 1 and the IDR data dictionary at Attachment 2 to this paper).

ASIC Question		Response
B5Q1	Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.	We agree with ASIC’s proposal and are of the view that the majority of the industry already applies this standard.
B5Q2	Do you consider that the data set proposed in the data dictionary is appropriate? In particular:	<ul style="list-style-type: none"> • We do not see the relevance of the information contained in the Complainant demographics. Generally, this information may not be readily available to all financial firms, or if it is available, it may not be available in an easily reportable form. • We note that complainant demographics is not information requested by AFCA in its Complaint Form. • We understand what ASIC is trying to achieve by requiring the recording of ‘Description of complaint from complainant’s perspective’ and ‘Complaint issue’. However, as both these items require the financial firm to interpret the information provided by the client and explain what the complaint is about, the data to be provided is the same and therefore it is our view that only one of these categories are required. • We feel that this should be recorded for all complaints referred to AFCA rather than just those referred back.
	(a) Do the data elements for ‘products and services line, category and type’ cover all the products and services that your financial firm offers?	The main issue is in the case where the complaint crosses over multiple ‘products and services line, category and type’. ASIC will need to ensure that the online reporting framework provides for financial firms to select multiple categories.
	(b) Do the proposed codes for ‘complaint issue’ and ‘financial compensation’ provide adequate detail?	The prescribed categories appear reasonable.

IDR data reporting

B6 proposal: ASIC will issue a legislative instrument setting out our IDR data reporting requirements. ASIC proposes that all financial firms that are required to report IDR data to ASIC must:

- (a) for each complaint received, report against a set of prescribed data variables (set out in the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint;
- (b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint);
- (c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and
- (d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated-value (CSV) files (25 MB maximum size).

ASIC Question		Response
B6Q1	Do you agree with our proposed requirements for IDR data reporting? In particular:	ASIC makes reference to a CSV file however ASIC should consider how a financial firm should report when it has no complaints or nothing to update. Sending a blank CSV file seems redundant.
	(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?	We refer to the response provided to the B5 proposal and point 8 of our cover letter in relation to the proposed IDR data dictionary.
	(b) Is the proposed maximum size of 25 MB for the CSV files adequate?	It depends whether ASIC requires a financial firm to upload the entire IDR data file each time or only data relating to open case file and those re-opened. If ASIC requires a financial firm to upload the entire file each time (as such registers are continuously updated) then 25MB may not be enough.
	(c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?	It appears reasonable for a financial firm to report changes arising during the reporting period provided that ASIC's reporting framework retains a historical set of the data so that if a change occurs at a later stage such changes can be reported.

Guiding principles for the publication of IDR data

B7 proposal: ASIC proposes to publish IDR data at both aggregate and firm level, in accordance with ASIC’s powers under s1 of Sch 2 to the AFCA Act.

ASIC Question		Response
B7Q1	What principles should guide ASIC’s approach to the publication of IDR data at both aggregate and firm level?	ASIC needs to take into consideration that a substantial number of complaints that are resolved are subject to confidentiality terms. So in reporting the IDR data ASIC needs to ensure that it won’t inadvertently cause the financial firm to breach the confidentiality terms and thus give the client another opportunity to take action against the financial firm, through no fault of their own.

IDR response – Minimum content requirements

B8 proposal: ASIC proposes to set out new minimum requirements for the content of IDR responses: see draft updated RG 165 at RG 165.74–RG 165.77 in Attachment 1. When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:

- (a) identifying and addressing all the issues raised in the complaint;
- (b) setting out the financial firms’ finding on material questions of fact and referring to the information that supports those findings; and
- (c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

ASIC Question		Response
B8Q1	Do you agree with our minimum content requirements for IDR responses? If not, why not?	<p>We agree with the guidance provided regarding the IDR response, however we think that ASIC should further clarify the guidance it has provided in RG 165.75 as it is ambiguous:</p> <ul style="list-style-type: none"> • RG 165.75(a) should be amended to ‘identifying and addressing all the issues raised in the complaint as understood by the financial firm’ • RG 165.75(c) should be amended to ‘providing enough detail for a reasonable person to understand the basis of the decision when deciding whether to escalate the matter to AFCA or another firm’. <p>The minimum standard should be the provision of information such that a reasonable person can understand the information provided.</p>

IDR response – Superannuation trustee

B9 proposal: ASIC does not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees.

ASIC Question		Response
B9Q1	Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.	We agree with ASIC's proposed approach.

B10 proposal: ASIC proposes to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable: see paragraph 22.

ASIC Question		Response
B10Q1	Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary	No there is no need for any additional minimum content requirements for IDR responses provided by superannuation trustees.

Reduced maximum IDR timeframes

B11 proposal: ASIC proposes to:

- (a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days;
- (b) reduce the maximum IDR timeframe for all other complaints (excluding credit complaints involving hardship notices and/or requests to postpone enforcement proceedings and default notices where the maximum timeframe is generally 21 days) from 45 days to 30 days; and
- (c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only.

ASIC Question		Response
B11Q1	<p>Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:</p> <p>(a) reasons and any proposals for alternative maximum IDR timeframes; and</p> <p>(b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.</p>	<p>We agree with ASIC's proposal to reduce the IDR timeframe for superannuation complaints to 45 days however disagree with ASIC's proposal to reduce the timeframe for all other complaints to 30 days.</p> <p>The point of the IDR process is to provide for a forum for a complainant and the financial firm to work together to resolve the complaint.</p>
B11Q2	<p>We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?</p>	<p>We are of the view that 30 days to resolve a complaint is unreasonable on the basis that:</p> <ul style="list-style-type: none"> • AFCA itself is unable to resolve a complaint within 30 days; • some complaints are complex and at times it can take a substantial number of days to identify and establish the issues which form part of the complaint and/ or obtain the relevant information from a client; and • 30-days is effectively 20 business days which does not provide the financial firm sufficient time to establish the facts, investigate the facts, and make a determination. <p>A more reasonable approach would be to use business days, ie. 5 business days for acknowledgement and 30 business day for IDR response.</p> <p>Taking into consideration that a complainant has up to 6 years after becoming aware of an issue to complain, it is reasonable to provide a financial firm up to 30 business days under the IDR timeframe.</p> <p>Interestingly, the reporting cycles that ASIC refers to are related to large organisations not small financial firms with limited resources.</p> <p>As a comparison we call upon ASIC to provide relevant statistics on its own complaint handling timeframes to demonstrate to the industry that it can lead by example.</p>

Role of customer advocates

B12 Proposal: ASIC proposes to require customer advocates to comply with RG 165 (including meeting the maximum IDR timeframes and minimum content requirements for IDR responses) if they:

- (a) act as an escalation point for unresolved consumer complaints; or
- (b) have a formal role in making decisions on individual complaints.

ASIC Question		Response
B12Q1	Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.	We agree with ASIC's proposed approach.
B12Q2	Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.	We are of the view that if a large organisation sees the need for customer advocates then the role of the customer advocate should be part of the IDR function and maximum timeframes. A large organization should not benefit by being given extra time to consider a complaint (before a client is able to lodge a complaint with AFCA) just because they have additional resources to dedicate to customer advocates which should be the role of the Complaints Manager.

Systemic issues

B13 Proposal: ASIC proposes to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis:

- (a) Boards and financial firm owners must set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints.
- (b) Reports to the board and executive committees must include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints.
- (c) Financial firms must identify possible systemic issues from complaints by:
 - (i) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues;
 - (ii) regularly analysing complaint data sets; and
 - (iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues.
- (d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action.
- (e) Financial firms must have processes and systems in place to ensure that systemic issue escalations are followed up and reported on internally in a timely manner.

See draft updated RG 165 at RG 165.128–RG 165.133 at Attachment 1 to this paper.

ASIC Question		Response
B13Q1	Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.	Yes to a degree as the proposed framework does not take into consideration how a small financial firm operates, ie. one with no Board of Directors or Executive Committees. RG 165 is supposed to be guidance given to industry by ASIC setting out how a financial firm can meet best practice in relation to complaints resolution and should be scalable based on a firms structure and size.

IDR Standards

B14 Proposal: ASIC proposes to update its guidance to reflect the requirements for effective complaint management in AS/NZS 10002:2014: see Section F of draft updated RG 165.

ASIC Question		Response
B14Q1	Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.	<p>We feel that ASIC's role is to provide best practice guidance rather than telling a financial firm what they must do. By providing best practice guidance ASIC will be encouraging financial firms to adopt minimum acceptable standards which are scalable based on the structure and size of the firm.</p> <p>It is our view that it is critical that the financial firm retains ownership and control of how it structures its IDR policy.</p>

Transitional arrangements for new IDR requirements

B15 Proposal: ASIC proposes that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments immediately on the publication of the updated RG 165, except for the requirements listed in Table 2.

ASIC Question		Response
B15Q1	Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.	We agree with the proposed transitional periods.
B15Q2	Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.	<p>We feel that an additional transitional period should be given for:</p> <ul style="list-style-type: none">• updating policies and procedures to address the requirements set out in RG 165