

6 July 2018

Ms. Alison Morrow  
Australian Financial Complaints Authority  
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**By email only to**

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Dear Colleagues

**Proposed Australian Financial Complaints Authority (AFCA)  
Rules: Supplemental Submission**

The Financial Services Council (**FSC**) has over 100 members and represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We would be grateful if you could accept and treat this submission as supplemental to our submission of 29 June 2018.

Accordingly, we make the following comments for your consideration:

**Concept of Systemic Issue**

1. We note that there appears to be inconsistencies between the various relevant definitions of *systemic issue*. For example:

*AFCA*

*An issue that is likely to have an effect on consumers or Small Businesses in addition to any complainant.*

## **Proposed Australian Financial Complaints Authority (AFCA) Rules: Supplemental Submission: 6 July 2018**

### *FOS*

*An issue that will have an effect on other persons beyond the parties to a dispute.*

### *ASIC:*

*An issue causing actual or potential loss or detriment to a number of clients as a result of misconduct or other compliance failure by an advice licensee or its current or former representatives.*

2. The inclusion of the “likely to” wording in the proposed AFCA Rules in replacement of the current FOS wording of “will” appears to us to be a significant lowering of the previous threshold for identifying an issue as systemic. Further, given the role AFCA will play in referring systemic matters to regulatory bodies such as ASIC and APRA, it would be appropriate for definitions of a systemic matter to be better aligned.
3. Currently, ASIC’s definition of a systemic issue impacting customers is outlined in RG 256 as:  
*An issue causing actual or potential loss or detriment to a number of clients as a result of misconduct or other compliance failure by an advice licensee or its current or former representatives. (at RG 256.21)*
4. Our view is that, insofar as it is possible, there should be synergy between relevant definitions. Thus, it seems to us that it would be appropriate for the Rules to adopt a definition of *systemic issue*, along the lines of the ASIC approach. In particular, we suggest:
  - (a) A threshold of causation that is more certain than ‘likely to’ (here, ‘causing’); and
  - (b) A description of the impact that the issue has on customers as ‘causing actual or potential loss or detriment’.

### **Response Time for Systemic Issues**

5. We note that the current 15 business day timeframe within which there must be a response to systemic issues may be insufficient in some cases, depending upon the complexity of the issue. Accordingly, we suggest that AFCA be given specific power to extend this timeframe, where it is appropriate and necessary.

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We would be happy to discuss any of the issues raised in this submission or in our earlier submission of 29 June 2018.

**Yours Faithfully**

A handwritten signature in blue ink that reads "Paul Callaghan." The signature is written in a cursive style with a period at the end.

**Paul Callaghan  
General Counsel**