

# Systemic Issues, serious contraventions and other breaches

## AFCA's obligations

- AFCA is the external dispute resolution scheme authorised to deal with complaints about financial products and services. AFCA is overseen by the Australian Securities and Investments Commission (ASIC). In addition to the requirements in the Corporations Act 2001, ASIC Regulatory Guide 267 *Oversight of the Australian Financial Complaints Authority* (RG 267) outlines the requirements of AFCA.
- AFCA has a formal obligation to **identify** systemic issues, serious contraventions and other breaches outlined in section 1052E of the Corporations Act, **refer** these to the financial firm for a response, work with them to resolve the issue and **report** the details to ASIC, or any other relevant regulator such as APRA or the ATO.

## What is a systemic issue?

- Under the AFCA Complaint Resolution Scheme Rules (AFCA Rules) a systemic issue is defined as an issue that is likely to have an effect on consumers or small businesses in addition to any complainant.
- Definite systemic issues are reported to ASIC and/or other relevant regulators on an **identified** basis. This includes the name of the licensee, authorised representative or employee/s (as appropriate).

## What is a serious contravention?

- ASIC Regulatory Guide 267 defines a serious contravention as “a serious contravention of any law (relevant to the subject matter and circumstances of the complaint under the AFCA scheme) which may have occurred.
- Once AFCA becomes aware a serious contravention may have occurred, it is required to provide information about the serious contravention on an identified basis to ASIC, APRA or the ATO (as appropriate).

## What other breaches must AFCA report to the regulators?

- Under ASIC Regulatory Guide 267, if the parties to a complaint made under the AFCA scheme agree to a settlement of the complaint and AFCA thinks the settlement may require investigation, AFCA **may** give particulars of the settlement to one or more of the regulators.
- ASIC Regulatory Guide 267 requires that breaches listed under section 1052E of the Corporations Act 2001 also be reported to the relevant regulators. The listed breaches are:

### Information is provided on an identified basis

A contravention of the governing rules of a regulated superannuation fund or an approved deposit fund may have occurred.

A party to the complaint may have refused or failed to give effect to a determination made by AFCA

A breach of the terms and conditions relating to an annuity policy, life policy or an RSA may have occurred

## How does AFCA deal with systemic issues?

- A summary of AFCA's approach and obligations is set out in the AFCA Operational Guidelines.
- Section A.17 relates specifically to systemic issues. Section A.18 relates to serious contraventions and other breaches.
- In relation to systemic issues, AFCA will phone and write to the financial firm and outline the possible systemic issue identified and seek a response. Based on the response, AFCA determines whether or not the issue is a definite systemic issue and, if so, what/if any remediation is required.
- Prior to notifying the relevant Regulators of a systemic issue, AFCA will first inform the financial firm that this information will be referred.

## What are the reporting requirements?

- Once AFCA determines that an issue represents a definite systemic issue, it has 15 days to refer this to the relevant regulator.
- Once AFCA becomes aware that an issue may represent a serious contravention or other breach, it has 15 days to refer to the relevant regulator.

## What controls are in place to ensure appropriate reporting to regulators?

- Prior to a matter being reported to a regulator, an Ombudsman (generally the Lead Ombudsman) will perform a reasonableness test on serious contraventions and other breaches, to ensure that appropriate matters are reported.
- Systemic issues will be reported once an Ombudsman (generally the Lead Ombudsman) confirms the matter is definitely systemic.

## Where can I learn more?

To help you understand AFCA's obligation to investigate systemic issues, contraventions and breaches, as well as the process itself, you can use our e-module, which will be made available on our website at [www.afca.org.au](http://www.afca.org.au).