

MEMORANDUM OF UNDERSTANDING
BETWEEN
AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED
AND
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

1. Introduction

- 1.1. Supporting a fair and efficient financial services sector is a key focus of both the Australian Financial Complaints Authority Limited (ACN 620 494 340) (AFCA) and the Australian Securities and Investments Commission (ASIC) (together, the parties). The parties recognise that a well-regulated and stable financial services sector is important for promoting consumer confidence.

2. Purpose

- 2.1. This Memorandum of Understanding (MoU) sets out the agreed basis for engagement, including coordination, cooperation, and information sharing, between AFCA and ASIC. This MoU reflects the parties' intentions to maintain a proactive, open and collaborative relationship to perform their respective functions effectively within the terms of the applicable law and other governing documentation.
- 2.2. The parties acknowledge that this MoU is to govern the administrative arrangements between them and is not intended to create legally binding obligations.
- 2.3. The parties may, by mutual agreement, establish supplementary protocols and guidelines to operate under this MoU.

3. Responsibilities

- 3.1. Although AFCA and ASIC have distinct mandates and responsibilities, they both have a common role in delivering consumer protection benefits within the financial services sector in Australia.
- 3.2. AFCA is authorised by the Minister as the operator of the AFCA scheme. Its role is to resolve complaints about Financial Firms (as defined by paragraph E.1.1 of AFCA's Rules), including those that ASIC regulates across the financial services sector. AFCA has obligations under Part 7.10A of the *Corporations Act 2001*, and is bound by its Rules (which have contractual force) and its constitution.
- 3.3. ASIC is Australia's corporate, financial markets, financial services and consumer credit regulator. One of its key responsibilities is a conduct regulator for Australian Financial Services licensees and Australian Credit licensees. ASIC also performs regulatory oversight functions in relation to the AFCA scheme under Division 2 of Part 7.10A of the *Corporations Act 2001*.

4. Agreement to engage

- 4.1. The parties recognise the importance of mutual consultation and cooperation in the effective discharge of their respective responsibilities.

- 4.2. Each party commits to developing and maintaining effective arrangements for engagement and, in accordance with legislative or contractual obligations and agreed protocols, having regard to each other's mandate and broader regulatory objectives.
- 4.3. Under the arrangements, each party will endeavour to:
 - 4.3.1. inform—proactively provide appropriate information and documents that are relevant to the other party and respond promptly to information and document requests;
 - 4.3.2. consult—where one party is considering or undertaking an activity that has an impact on the other party's responsibilities;
 - 4.3.3. collaborate—seek input from, or collaboration with, the other party to achieve or improve regulatory outcomes, particularly in policy development and consultation with industry; and
 - 4.3.4. engage effectively—seek to improve the efficiency of its interaction with the other party and, in areas of common interest, the efficiency and effectiveness of interaction with industry participants.
- 4.4. The parties agree to a proactive approach to engagement, which will include senior-level liaison meetings, and mechanisms to share perspectives and expertise on relevant issues.

5. Information Sharing

- 5.1. The parties acknowledge that this MoU does not alter or affect any existing statutory obligations applicable to disclosure of information by one party to the other.
- 5.2. The parties acknowledge the benefits of sharing information that will assist each other in performing their functions and exercising their powers.
- 5.3. The parties may share, to the extent possible, information relevant to regulated entities or persons, with each other. This is subject to any statutory secrecy and non-disclosure obligations, other confidentiality and information-sharing obligations, or any other constraints including, privacy legislation obligations. The parties agree to adhere to any conditions imposed by the disclosing party or any other terms required.
- 5.4. The parties agree not to disclose any confidential information obtained to a third party unless: the disclosure is required by law or is in response to a request or requirement from an Australian parliamentary committee. In such cases, each party agrees to advise the other in advance of the proposed disclosure, where possible.
- 5.5. The parties acknowledge that there are circumstances where disclosure may be permitted by law. In such cases, each party will advise the other in advance of any proposed disclosure, where possible.

6. Administration of MoU

- 6.1. The parties may review the operation of the MoU (including any supplementary protocols and guidelines) on a periodic basis and consult with each other about improving the operation of the MoU where necessary. Any part of this MoU may be amended at any time with the mutual agreement of both parties in writing.
- 6.2. The parties agree that this MoU may be published on each party's website.

7. Termination

- 7.1. This MoU may be terminated by either party giving not less than 30 days' written notice of the intention to terminate to the other party.
- 7.2. In the event of the termination of this MoU, the parties agree that any information obtained under this MoU will continue to be treated confidentially in the manner set out in clause 5.4 of this MoU.

.....
David Locke
Chief Ombudsman and CEO
Australian Financial Complaints Authority

Date: 1 December 2023

.....
Joseph Longo
Chair
Australian Securities and Investments
Commission

Date: 1 December 2023