

### FINANCIAL SERVICES AFSL REGULATORY UPDATES COMING IN TO EFFECT 5 OCTOBER 2021

The Australian Securities Investment Commission (**ASIC**) has introduced a number of new rules and amended others as recommended by the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry. These changes will affect most AFSL holders and will require them to put updated policies and procedures in to place by 5 October 2021.

#### Key takeaways:

The new regulations for AFS licensees are:

- Design and Distribution Obligations;
- Internal Dispute Resolutions requirements;
- restrictions on the unsolicited selling of financial products (hawking);
- a deferred sales model for add-on insurance products;
- reference checking and information sharing requirements for financial advisers and brokers; and
- new requirements around how breaches are reported to ASIC.

#### Design and Distribution Obligations (DDO) (RG 274)

The new obligations require issuers and distributors to adopt a more consumer-centric approach and ensure the product offerings to retail clients are appropriate for their target market. The main change is the obligation to provide customers with a Target Market Determination (**TMD**). The TMD is a statement which sets out the kind of market the financial product is intended for, and what kind of customers it is appropriate for. These TMDs must be reviewed on a regular basis, so firms must update their policies and procedures to accommodate this process.

Product Issuers must:

- make a TMD for each product covered by the regime;
- take reasonable steps that will, or are reasonably likely to, result in 'retail product distribution conduct' being consistent with the TMD;
- notify ASIC of 'significant dealings' in a product in relation to a retail client, that are inconsistent with the TMD (i.e outside the target); and
- review the TMD regularly and keep records.

Product distributors must:

- not distribute a retail product unless all reasonable enquiries and TMDs have been made for the product;
- take reasonable steps that will, or are reasonably likely to, result in the distribution of the product being consistent with the TMD; and
- notify the issuer of 'significant dealings' that are inconsistent with the TMD.

#### Internal Dispute Resolution (IDR) (RG 271)

Changes coming into effect on 5 October 2021 will assist in improving the timeliness of complaints handling, clearer messaging to consumers, and consistent recording of complaints. Similar to DDO, purely wholesale funds are generally exempt from these obligations. However, firms ought to consider the regulatory guides carefully to understand the extent to which the changes may apply to them.

Firms should be aware of the following changes:

- broader definition of 'complaint' (including expressing dissatisfaction on social media);
- reduction in timeframes for responding to complaints (eg. from 45 to 30 days for standard complaints);

- content that financial firms need to include in a written IDR notice or response;
- new timeframe requirements for reviews of appeals against IDR decisions;
- Licensees' requirements around outsourcing the IDR process;
- methods to act in the consumers' best interests;
- identifying and managing systemic issues; and
- required membership to the Australian Financial Complaints Authority (AFCA).

## **Breach Reporting (RG 78)**

New Breach Reporting standards will require the Financial Services industry to identify as well as report breaches and remediate consumers in a timely manner. For the first time, these standards extend to credit licensees who are mortgage brokers.

All breach notifications must now be made through the ASIC Regulatory Portal. Firms should set up an account on the portal if they have not already done so. While the regulations maintain that not all breaches are reportable (only those deemed 'significant' under the Corporations Act<sup>1</sup>) the changes extend the requirement to report breaches, to include a breach which results in 'material loss or damage to a customer.'

Licensees need to ensure their compliance procedures allow early, accurate detection of breaches and where applicable for those breaches to be reported immediately.

## **Reference Checking and Information Sharing (INFO 257)**

Reference Checking and Information Sharing reforms apply most notably to AFS licensees who are recruiting representatives. The reforms require licensees to share information about former and prospective representatives (eg. financial advisers).

The reforms aim to promote better information sharing about the conduct of financial advisers and mortgage brokers, focusing on compliance, conduct, and risk management.

## **Hawking (RG 38)**

These reforms aim to give consumers more control over the circumstances in which they are offered products and prevent consumers being approached with unwanted products on cold-calls or through unsolicited contact.

These new provisions aim to enhance the definition of 'unsolicited contact,' and 'consumer consent'.

## **Deferred sales model for add-on insurance product (RG 275)**

These reforms introduce 'new sales models' to which the insurance market must adhere to improve how insurance products are designed and sold, and how claims are managed.

It introduces a 'deferred' four day pause between the sale of a principal product or service and the sale of add-on insurance.

## **What AFSL and ACL Holders need to do**

With the introduction of these important reforms, ASIC will undoubtedly be stepping up its surveillance program. It is therefore critical that AFSL holders and ACL holders implement these changes now. It would also be timely to review your whole compliance program as ASIC will not restrict itself to reviewing compliance with these particular requirements in its surveillance activities.

ClarkeKann's financial services team are ready to assist if needed. We are able to provide updated policies and procedures, template TMD's and conduct an overall health check of your compliance program.

If you would like any further information or would like to discuss your legal requirements, please contact [Miles Anderson](#) on 02 8235 1244 or your usual ClarkeKann contact.

---

<sup>1</sup> Corporations Act 2001, s 912DAA.

