



Investment & Financial Services Association Ltd  
ACN 080 744 163

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Mr Keith Chapman  
General Manager  
Policy Development  
Australian Prudential Regulation Authority

Via email: [breachconsultation@apra.gov.au](mailto:breachconsultation@apra.gov.au)

Dear Mr Chapman,

### **APRA/ASIC DISCUSSION PAPER - STREAMLINING BREACH REPORTING**

IFSA welcomes the opportunity to comment on the joint APRA and ASIC Discussion Paper on the streamlining of breach reporting resulting from the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007 (SRR Act)*. The proposals contained in the Discussion Paper will reduce duplication of breach reporting where a prudentially regulated entity is required to report a breach to both APRA and ASIC.

The Investment and Financial Services Association is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 145 members who are responsible for investing over \$1 trillion on behalf of more than 10 million Australians. Members' compliance with IFSA Standards and Guidance Notes ensures the promotion of industry best practice.

We provide the following comments on the issues raised in the Discussion Paper and the draft Breach Notification Forms.

#### **General Comments**

IFSA welcomes the facilitation by APRA of breach reporting where an entity is required to report a breach to both APRA and ASIC. Members support the proposed process which enables the simultaneous notification of a reportable breach to the regulators.

A number of IFSA members have expressed disappointment that a single electronic Government portal has not been developed to enable reporting to ASIC alone, and to ASIC and APRA jointly. In the absence of a single electronic portal, IFSA would welcome the development of an online system for lodging ASIC breach reports that is the same as the APRA current online breach reporting system. We note, however, that such developments are outside the scope of the SRR Act and not APRA's responsibility.

Section 912D(1C)(b) of the *Corporations Act (Act)* (as inserted by the SRR Act) provides that where a breach by an APRA regulated entity is required to be reported to ASIC, and the breach is reported to APRA in accordance with the terms of an **agreement** between APRA and ASIC, then the breach is taken to be reported to ASIC. This agreement does not appear

to be set out in any statutory instrument or to otherwise be publicly available. This does create a level of legal uncertainty as the deemed lodgement of documents is dependant on the undisclosed terms of an agreement between the regulators. The agreement should be a public document.

IFSA notes the proposed streamlined breach reporting system is voluntary and, that current reporting relationships between individual reporting entities with APRA and ASIC can be maintained. That is, we assume that established arrangements between entities and the regulators for breach reporting will continue. In this regard, we think it would be useful if APRA and ASIC publish a joint guide on breach reporting. Such a guide should outline the procedures followed by both ASIC and APRA in dealing with breach reports, not merely a Guide on completion of the online forms. The Guide should also indicate what actions the regulators expect by way of ongoing contact from an entity in the course of resolution of a breach.

We note that APRA and ASIC continue to have different processes in relation to breach reporting. That is, ASIC will respond to the entity by advising what, if any, action will be taken whereas APRA are often silent. It would be useful if APRA provided a response to significant breaches in a similar manner to how ASIC responds to reported breaches. That is, by sending a letter to the regulated institution to either request further information if they are investigating the issue, or advising that on the basis of the information presently available, they do not propose to make any further enquiries. In addition, for APRA there is a relationship contact, but for ASIC there is not necessarily any continuity in the person dealing with the matter. While these issues are not related directly to the Discussion Paper, it would be sensible for the regulators to address these anomalies as part of the broader streamlining process.

The following issues/points have been raised by various IFSA members:

- The SRR Act provides for Life Insurance (section 132A) and RSE Licensees (section 29JA of the Superannuation Industry (Supervision) Act 1993) to report matters if a breach is, or **will be**, a significant breach of the relevant Act. Immediate notification is required in specified instances. The Corporations Act requires a breach, or **likely breach**, that is significant to be reported. We assume, for the purposes of the online reporting requirements, that the terms “will be” and “likely” breaches are equivalent.
- There are instances where a regulator (eg APRA) may be informed of a breach for “information purposes” only where the other regulator (eg ASIC) is required to be informed due to legislative requirements. Should the online reporting system be used for such “information purposes”?
- Related to the above issue is the question of whether the online breach reporting mechanism will be used for both breaches where immediate notification is required (eg if an event affects the financial position of an entity) and significant breaches where 10 business days are allowed.
- If the online system is to be used for both breaches requiring immediate notification and significant breaches, then a number of the text fields in the draft Breach Notification Form regarding the financial position of any entity would be irrelevant. Possible solutions could be to include a preliminary section in each of the online forms to allow regulated entities to indicate which section of the relevant Acts they are submitting a report in accordance with, or the affected sections of the Acts could be covered in the commentary box, as necessary, rather than adding new sections for compliance purposes.

## Draft Breach Notification Form

- As there is limited information contained in the draft Breach Notification Form (eg. no guide provided as to what will be in the drop-down menus) it is difficult to assess the useability or practicality of the draft Form. It would be useful for APRA/ASIC to set up a test system for regulated institutions on which they can provide feedback prior to the Form and online system being finalised.
- A save facility within the online breach reporting system prior to submitting the report to APRA would be useful. This would enable regulated institutions' internal sign-off to be completed more efficiently and effectively.
- Clarification is needed in relation to the Condition Requirements section of the Form.
  - The regulated institution is only able to select one option - APRA authority or AFS licensees. There may be instances where both are applicable and, therefore, the form should allow you to select both options;
  - "Condition Requirements: APRA Authority" requires further clarification. A Life Insurance company is required to report breaches of the Life Insurance Act under the new regime, which in turn requires a Life Insurance company to comply with a range of other laws, prudential standards and rules.. We question the use of the term "APRA authority" without definition or explanation, especially with the accompanying free text box".
- It appears that if the breach was to impact multiple related entities, separate online forms would be required to be submitted for each entity. It is also noted that the form is tailored for specific industries. However, it is not clear how this will work where an entity operates across more than one industry, for example, life insurance and superannuation. A more practical approach would be for the online breach reporting form to be "breach based" and to allow the inclusion of information regarding multiple affected related entities.
- The initial breach notification may indicate that further progress reports on the rectification activities are to be made to the regulators. The current online forms do not contemplate updates to existing breaches, only the initial notification. It is suggested that APRA amend the lodgement form to include an additional field that would indicate the report was in fact an update to an existing breach rather than notification of a new breach.

We note that Step 5 of Attachment B to the Discussion Paper provides that an APRA reference number will be sent to the contact person with the acknowledgement of receipt of the notification form.

- RSE licensees who are currently using the online breach reporting system have found that the print function does not permit printing of the entire document. This should be corrected as it would be useful for entities to be able to print the forms and use them to assist with internal reporting and record keeping.
- The proposed form allows only 300 characters to be entered in the free text fields - "Nature and Impact of Breach" and "Rectification Steps Taken". This is insufficient to properly detail a breach and the rectification steps to be taken. If the 300 character limit remains, IFSA anticipates it would result in APRA being sent information lacking substance and instead referring the reader to attachments. We, therefore, recommend that the free text fields be expanded to allow at least 1,500 words.

- In relation to the draft online form for Life Insurance, it appears the date in the Form would be required in a standard date format. It is submitted that the exact date of the breach may not be known at the time of reporting as investigations may still be continuing. It is, therefore, recommended that this field should be free text to allow for an approximate date, eg. "March 2007",
- IFSA notes that for the purpose of verifying the online form, the Discussion Paper indicates that an initial list of 'Contact Persons' will include the APRA Prudential Contact, Company Secretary and Fund Secretary (see Attachment B at page 9 of the Discussion Paper). IFSA members would like the opportunity of providing APRA with a list of designated contact people before the streamlined reporting regime commences and would be keen to ensure that compliance staff are included in the listing. It is IFSA's view that there should be no restriction on who within the regulated institution can be nominated as a contact person (as long as the relevant consent is obtained within each institution).

We would be pleased to discuss any of the issues raised above with you further and should you have any queries or require any additional information please contact me or Joanna Beeston on 9299 3022.

Regards



**David O'Reilly**  
Policy Director - Regulation