

**Practice Note
No.4**

PN4 Systemic Issues Procedures

**Procedures for dealing with Systemic Issues and Serious Misconduct
pursuant to ASIC Regulatory Guide 139**

ASIC Regulatory Guide 139 (paragraphs 139.62, 139.69, 139.70, 139.75 and 139.77) requires approved external complaints resolution schemes to establish internal procedures to identify, record and report systemic issues, alleged serious misconduct and serious misconduct.

The Investments Life Insurance and Superannuation division of FOS is effectively a successor to the Financial Industry Complaints Service (“FICS”), and the Investments Life Insurance and Superannuation Terms of Reference provide for the same procedures as set out in the FICS Rules as in force immediately before 1 July 2008.

Practice Notes developed by the FICS Panel under its procedures have been adopted by Investments Life Insurance and Superannuation division of FOS, for the guidance of parties.

The procedures set out in this Practice Note will apply from 1 July 2008. Apart from minor changes of terminology, they replicate the procedures of the equivalent FICS Practice Note 4 as in force from 17 May 2004.

FOS Procedures

The Investments Life Insurance and Superannuation division of FOS has established the following procedures to meet the ASIC requirements.

1. Staff and Panel members dealing with complaints shall be trained to be alert to potential systemic issues or serious misconduct. Such issues or conduct are required to be reported to the the Investments, Life Insurance and Superannuation Ombudsman (“the Ombudsman”).
2. Staff and Panel members shall have regard to the FOS rules, the law, any relevant industry Codes of Practice and any ASIC reporting guidelines when identifying potential systemic issues.
3. After the Ombudsman forms an initial view that a matter is systemic in character or involves serious misconduct, FOS will counsel the scheme member

or members in an effort to have the matter promptly rectified. A matter will be rectified where any and all identifiable consumer detriment is remedied.

4. It is recognized that not all systemic issues will involve a particular scheme member or members, and that in these cases a counselling process will not be necessary or appropriate. In these cases a general report will be prepared for the Board, in relation to the systemic issue that has been identified, and a copy will be sent to ASIC.

5. The Ombudsmen are required to act expeditiously in relation to the counselling process where an urgent resolution is required eg where alleged serious misconduct is ongoing, or a systemic issue of a serious nature is ongoing.

6. If the identified issue or conduct is rectified and is, in the view of the Ombudsman, unlikely to recur, then the Ombudsman will follow up and include the matter in a general report to the Board of FOS. Once the Board has reviewed the general report, a copy will be sent to ASIC. Such a report will not identify the member, but will include the numbers of each type of systemic issue and serious misconduct that have been found, investigated and rectified.

7. If the systemic issue or serious misconduct is not rectified by the member within a reasonable time, the Ombudsman will notify the member that, in FOS' view, the member should be identified and the matter referred to the FOS Board for consideration and, if considered appropriate, identified and referred to ASIC. Prior to referring a matter to the FOS Board in such circumstances, FOS will allow ten business days for the member to provide reasons as to why the matter should not proceed in this way.

8. If the matter is rectified, the procedure outlined under six (6) above will apply.

9. Where the member's response satisfies the Ombudsman that the matter is not a systemic issue or does not involve serious misconduct, then the matter will not proceed in the manner described in paragraph 6.

10. If the matter is not rectified by the member and there is no response from the member, or the response is not sufficient to satisfy the Ombudsman that the matter has been rectified or will not recur, the Ombudsman will prepare a report to the Board containing:

- the identification of the member;
- the details of the systemic issue or serious misconduct involved;
- action taken by FOS;
- the response by the member;
- a recommendation to the Board that the member be reported and identified to ASIC.

11. The Board will then decide whether the member should be reported and identified to ASIC in accordance with ASIC Regulatory Guide 139. The Board will consider the particular circumstances of the referral, including whether the member has had sufficient time and information to adequately respond in its defence. The Board will act expeditiously in relation to reporting the member where an urgent resolution is required.