

Guidance Note

Released:

07 June 2019
Version: 3

Key concepts

Efficient use of CCC and Appeals Tribunal resources.

Related information

FGL Operating Rules

7.4 and 7.7

Recommended Audience

Compliance Managers

Legal Counsels

Chief Executives and Managing Directors

Previous Issues:

Nil

GN 46 - Consolidation of Disciplinary Proceedings

Introduction

FGL Operating Rule 7.7.1 provides the Compliance and Conduct Committee (CCC) with the power to combine proceedings against more than one Respondent when commencing to consider the same or similar circumstances. This power is granted to the CCC for reasons of practical efficiency.

Guidance

Notification to Respondents by FGL

Whenever proceedings are considered appropriate to consolidate, all Respondents will be advised through receipt of a formal notice (sent under Rule 7.4.2) from FGL on behalf of the CCC that their proceedings are proposed to be consolidated. This notification will be provided to Respondents in sufficient time such that any Respondent wishing to object to the consolidation of proceedings by the CCC can adequately do so.

Consideration of Objections

Whilst there is no obligation upon the CCC to automatically grant a separation of proceedings after receiving an objection to a proposed consolidation, providing the Respondent has a reasonable case as to why proceedings should be separated, it will be normal practise of the CCC to separate out proceedings for any Respondent that objects. Spurious objections are highly unlikely to be accepted as cause for separation of proceedings. All objections received will be considered by the CCC and a decision regarding the objection will be delivered to the Respondent prior to the commencement of any proceedings.

This objection must be received within the time periods outlined within the FGL Operating Rules.

No cause for Appeal

Respondents should note carefully that while they have a right to object to consolidation, the fact that a proceeding has been consolidated, or has been proposed to be consolidated, objected to by a Respondent and left consolidated because the objection was not deemed reasonable by the CCC, the consolidation status does not give rise to any grounds for appeal against the outcome of the proceedings.

Further, when proceedings have been carried out on a consolidated basis, the Appeals Tribunal may also choose to hear appeals on a consolidated basis.

FGL has issued this Guidance Note to give general assistance to Trading Participants and Clearing Entities in their compliance with the Operating Rules. FGL is not bound by this Guidance Note in any particular case. This Guidance Note is not legal advice and Trading Participants and Clearing Entities should seek their own professional advice on their obligations under the Operating Rules in their particular circumstances. FGL may replace this Guidance Note at any time. Current Guidance Notes are available at www.fex.com.au/Guidance or by contacting FGL on enquiries@fex.com.au or on +61 2 8024 5200

Defined terms in this Guidance Note have the meaning given in the Operating Rules.