

## PUBLIC REGISTER VERSION

7 December 2018

BY EMAIL: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

General Manager  
Adjudication  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Sir/Madam

### Collective bargaining notification: Pathways Advisers

#### Notifying Party

#### 1. Provide details of the notifying party

##### 1.1 Name, address (registered office), telephone number, and ACN

All Pathways Advisers including current members as referred to in response to question 15 and other Pathways Advisers who may join the collective bargaining process in future; and

CFP Pathways Adviser Council (**Adviser Council**),

(together, the **Notifying Parties**).

##### 1.2 Contact person's name, telephone number, and email address

John Gregoire  
Practice Principal and Adviser Council Head  
Telephone: (02) 9734 6111  
Mobile: 0414 574 023  
Email: [john.gregoire@cbaftp.com.au](mailto:john.gregoire@cbaftp.com.au)

##### 1.3 A description of business activities

Corporate Authorised Representatives or Sub-Authorised Representatives (**Pathways Advisers**) are authorised representatives of Commonwealth Financial Planning Limited (**CFPL**) (AFSL 231139), which is a wholly-owned non-guaranteed subsidiary of the Commonwealth Bank of Australia (**CBA**), which provides personal advice and arranges to deal in financial products with customers throughout Australia.

Each Pathways Adviser operates a small business through separate trading entities and employs their own staff at separate premises to CFPL.

The Adviser Council was established to facilitate communication between Pathways Advisers and CFPL.

## 1.4 Email address for service of documents in Australia

Email address for service of documents in Australia should be directed to john.gregoire@cbaftp.com.au.

### Details of the notified conduct

## 2. Indicate what the notified conduct is for

The notified conduct is for collective bargaining under section 93AB of the *Competition and Consumer Act 2010 (Cth) (CCA)* that does not include a collective boycott.

## 3. Provide details of the notified conduct including:

### 3.1 A description of the notified conduct

In conjunction with the announced CBA wealth management demerger (see <https://www.commbank.com.au/guidance/newsroom/demerger-of-wealth-and-mortgage-broking-businesses-201806.html>), CFPL activities relating to Pathways Advisers and the respective Pathways Agreements are to be discontinued in 2019.

Accordingly, CFPL is embarking on an Expression of Interest (EOI) process in respect of the sale of its Pathways client books (**Sale**). As part of the Sale, it is expected that each participating Pathways Adviser will enter into one or more agreements to give effect to the Sale of the relevant client books, which will allow their financial advisory practices to continue to service these clients under a different ownership and licensing structure going forward.

The collective bargaining conduct will relate to the Sale process whereby Pathways Advisers will be participating in the acquisition of the relevant client books from CFPL as vendor.

This notification is to enable the Pathways Advisers to collectively bargain with CFPL in relation to the terms, conditions and other commercial matters with respect to the Sale process. In principle, it is expected that the Adviser Council will negotiate on behalf of the Pathways Advisers.

It is planned that the Pathways Advisers, of which there are currently approximately 60 in total, may collectively negotiate with CFPL. The Adviser Council is planned to represent the Pathways Advisers and the parties provide this notification on that basis.

Participation by the Pathways Advisers is purely voluntary. Pathways Advisers who do not wish to participate in collective bargaining will be able to continue to conduct negotiations with CFPL on an individual basis. It is currently anticipated that 46 Pathways Advisers will participate in the collective negotiations with CFPL initially. Other Pathways Advisers may join the collective bargaining group in future. Pathways Advisers may cease to participate in the collective bargaining negotiations at any point.

If any of the Pathways Advisers are unable to negotiate an agreed position with respect to the Sale (whether negotiating collectively or individually), they will not be required to enter into a contract for the Sale, and their Pathways Agreement will terminate.

### 3.2 Any relevant documents detailing the terms of the notified conduct

Not applicable.

### 3.3 The rationale for the notified conduct

The rationale for the notified conduct is to enable the Pathways Advisers and CFPL to effectively and efficiently negotiate aspects of the Sale. If CFPL negotiates the Sale with each Pathways Adviser individually, this would be more likely to incur significant transaction costs for each Pathways Adviser, noting the significant number of Pathways Advisers participating in the Sale process. Furthermore, some Pathways Advisers may lack the requisite commercial and negotiating experience and/or capacity to efficiently and effectively navigate the Sale process alone. The collective nature of the process is expected to address these concerns.

### 3.4 Any time period relevant to the notified conduct

The proposed timetable for the Sale and execution of one or more transaction documents is anticipated to be completed by the end of February 2019 or early March 2019.

### 4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to notified conduct and any minutes or record of the decision made.

Not applicable.

### 5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.

All 60 Pathways Advisers will have the opportunity to benefit from the notified conduct. The details of the 46 Pathways Advisers who currently intend to participate are provided in a separate confidential annexure.

The 'target' in collective bargaining is CFPL as the prospective vendor of the client books. Negotiations may also be conducted in relation to other documents relevant to the Sale and Purchase Agreement which will involve Financial Wisdom Limited and CBA (as applicable). The Notifying Parties have discussed their intention to file a collective bargaining notification with CFPL. In response, CFPL has indicated that it is willing to engage in collective bargaining provided it does not include a collective boycott. Accordingly, the Notifying Parties understand that CFPL does not oppose this notification on these terms.

### Market information and concentration

### 6. Describe the products and/or services supplied, and the geographic areas supplied, by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).

The Pathways Advisers have been appointed by CFPL as authorised representatives to provide personal advice and arrange to deal in financial products on CFPL's approved product list in certain classes with customers of CFPL throughout Australia.

Pursuant to the existing Pathways Agreements, Pathways Advisers provide financial services and other services which they are authorised to provide under their respective letter of authority issued by CFPL, which may include some or all of the financial services covered by CFPL's AFSL.

### 7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

Pathways Advisers operate in the financial services industry, or more specifically, the financial planning industry.

The Pathways Advisers provide financial planning services to CFPL customers through, for example, the provision of financial assessments and the preparation of short and long term financial plans.

### 8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

The Notifying Parties are not in a position to provide an estimate of market shares for each of the parties, however, on any view it will be extremely low. There are more than approximately 25,000 financial advisers licensed in Australia (see <https://data.gov.au/dataset/asic-financial-adviser>).

### 9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:

#### 9.1 Existing or potential competitors

#### 9.2 The likelihood of entry by new competitors

**9.3 Any countervailing power of customers and/or suppliers**

**9.4 Any other relevant factors.**

The competitive constraints on the Pathways Advisers will not change at all as a result of the notified conduct. The notified conduct will allow a more efficient process for the Sale to occur by which Pathways Advisers will be able to continue to service customers that form part of the Sale notwithstanding that their relationship with CFPL will be terminated.

Public benefit

**10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

The notified conduct will generate public benefits including the following:

- (a) Reduced transaction costs leading to efficiency gains through a collective channel of negotiation that facilitates efficiency whilst promoting the collective interests of the Pathways Advisers:

Given the number of Pathways Advisers, individual negotiations on key commercial terms may lead to lengthy and protracted negotiations that will incur significant transaction costs for individual parties. This inefficiency will to an extent be mitigated through the notified conduct, as collective negotiation will increase efficiency and decrease unnecessary transaction costs associated with the Sale.

- (b) Improved bargaining power for the relevant Pathways Advisers leading to a more efficient allocation of resources:

The notified conduct may facilitate a more balanced forum in which negotiations may be undertaken and help to minimise the risk that individual Pathways Advisers may be at a relative disadvantage because of the smaller scale of their operations.

These public benefits outweigh any public detriment which may arise from the notified conduct.

Public detriment

**11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

The notified conduct causes no detriment to the public.

Contact details of relevant market participants

**12. Identify and/or provide contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

CFPL contact:

Mark Ballantyne  
General Manager  
Mobile: 0413 930 676  
Email: mark.ballantyne @financialwisdom.com.au

Any other information

**13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.**

Not applicable.

Additional information for collective bargaining (with or without a collective boycott) conduct only

14. **Confirm that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.**

The Notifying Parties are not a trade union, officer of a trade union or acting at the direction of a trade union.

15. **Provide details (name, phone number, email address) of the persons who are current members of the group (contracting parties) on whose behalf the notification is lodged. If relevant, identify the classes of persons who may become contracting parties in the future and on whose behalf the notification is lodged.**

Current group

The details of the 46 Pathways Advisers who intend initially to participate in the collective negotiations are provided in a separate confidential annexure.

Other Pathways Advisers may join the collective bargaining process in future.

16. **Confirm each contracting party reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period. Provide details of the basis for that expectation.**

It is expected that the value of the contracts for the Sale between the Pathways Adviser and the CFPL will not exceed A\$3 million in any 12 month period.

17. **If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:**

- 17.1 **The event/s that would trigger a collective boycott:**

Not applicable.

- 17.2 **The process that would be followed:**

Not applicable.

- 17.3 **Any proposed notice period to be given to the target/s prior to commencing a collective boycott:**

Not applicable.

- 17.4 **Any proposed dispute resolution procedure between the contracting parties and the targets:**

Not applicable.

**Declaration by notifying party**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Office held

\_\_\_\_\_  
(Print) Name of authorised person

This 07 day of December 2018