



**ASIC**

Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

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Mr Simon Bell  
Assistant Director  
Adjudication Branch – Merger and  
Authorisation Review Division  
Level 2, 23 Marcus Clarke Street  
Canberra ACT 2601

Your Reference: AA1000432

8 April 2019

Dear Mr Bell

**Mortgage and Finance Association of Australia (MFAA) application for  
reauthorisation of its Disciplinary Rules – Interested Party Consultation**

Thank you for your invitation to comment on the MFAA's application for reauthorisation of its Disciplinary Rules (the Rules).

By letter dated 17 December 2013 ASIC provided comment to the ACCC on the MFAA's previous application for reauthorisation of the Rules. The comments made at that time remain relevant to the current application and a copy of that letter is attached.

Since the Rules were last authorised, the MFAA has taken disciplinary action against a number of members. These actions enable the MFAA to enforce its code of practice which promotes professional standards over and above that required by legislation. Details on the MFAA's website of member expulsions, suspensions and cancellations can also assist the public make more informed decisions when choosing a broker to deal with. In addition, ASIC may obtain further detail from the MFAA regarding the reasons for its disciplinary action to consider whether any regulatory action is required (e.g. cancellation of a credit licence).

Should the ACCC not reauthorise the Rules the above public benefits would be lost.

ASIC notes that the MFAA seeks reauthorisation of the Rules for 10 years. ASIC also notes that there is potentially significant legislative change that may eventuate as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. That being the case, ASIC would support reauthorisation for a shorter period than 10 years.

If you have any queries in relation to this letter or require additional information, please contact Alistair Morton on 08 9261 4274 or by email to [Alistair.morton@asic.gov.au](mailto:Alistair.morton@asic.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Allen', with a long horizontal stroke extending to the right.

Robert Allen  
Senior Manager – Credit, Retail Banking and Payments  
Financial Services Group



**ASIC**

Australian Securities & Investments Commission

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Your Reference: 52934  
Our Reference: 51855/13

17 December 2013

Hayley Parkes  
Acting Director  
Adjudication Branch  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

Dear Ms Parkes

**Mortgage and Finance Association of Australia (MFAA) application for authorization A91396 –  
Interested party consultation**

Thank you for your invitation to ASIC to comment on the MFAA's application for reauthorisation of its Disciplinary Rules.

Since the last authorisation by the ACCC of the MFAA's Disciplinary Rules in 2009, the *National Consumer Credit Protection Act 2009* (Cth) (National Credit Act) has come into effect. In addition to licensing requirements, the National Credit Act imposes general conduct obligations and responsible lending obligations on credit providers and credit assistance providers (including mortgage brokers and other intermediaries in the credit industry), in respect to consumer credit.

While there is no requirement under the National Credit Act for licensees to be members of the MFAA or any other industry body, ASIC considers that industry organisations can play an important consumer protection role in raising industry standards and in investigating and appropriately responding to instances of member misconduct.

Our view in relation to the items you raise on the operation of the proposed Disciplinary Rules and the overall MFAA governance regime are set out below.

*Continues to result in a public benefit that is not provided by any other regulation;*

The MFAA requirements cover a wider area of credit products and in some instances may have higher requirements than required by current national legislation.

MFAA members must ensure that a credit contract is "appropriate" for a consumer, which is arguably a slightly higher threshold than the "not unsuitable" requirement embodied in the National Credit Act.

Additionally the National Credit Act regulates consumer credit only; whereas the MFAA code of practice covers all credit activities engaged in by its members including small business and commercial equipment lending.

*Has created an enhanced professional and ethical standard that has resulted in benefits to consumers and the public since they have been in effect;*

The National Credit Act requires credit licensees to ensure that their representatives are adequately trained and competent to engage in credit activities. Our guidance in *RG206 Credit licensing: Competence and training* notes that licensees and their representatives who provide third-party home loan credit assistance should have at least a Certificate IV in Finance and Mortgage Broking.

The MFAA requires higher minimum qualifications for those involved in mortgage broking in order to obtain membership, being a Diploma in Finance and Mortgage Broking, or equivalent. The MFAA also provides a mentoring program that is designed to provide support for new entrants into the industry.

*Has an impact on the ability of members or non-members to compete;*


Individual mortgage brokers may engage in credit activities by obtaining an Australian Credit Licence or being authorised as a credit representative of a licensee, or being employed by a licensee. Participation in the mortgage industry remains accessible irrespective of MFAA membership.

*Likely scenario should the ACCC not authorise the MFAA rules;*

Should the ACCC not authorise the MFAA rules, and as a result the MFAA not be in a position to effectively enforce its code of practice, this would reduce the potential public benefit associated with MFAA membership, particularly by mortgage brokers.

If you have any queries in relation to this letter or require additional information, please contact Alistair Morton on 08 9261 4274 or by email to [Alistair.morton@asic.gov.au](mailto:Alistair.morton@asic.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christopher Green', with a stylized, flowing script.

Christopher Green

Acting Senior Executive Leader - Deposit-takers, Credit and Insurers