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Application for Authorisation of the Aggregator Assurance Program

by the Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group Limited, National Australia Bank Limited and Macquarie Bank Limited (Applicants)

Applicants' Response to the ACCC's Questions dated 19 July 2023

The Applicants are pleased to provide this response to the questions asked by the Australian Competition and Consumer Commission (ACCC) on 19 July 2023 in respect of the application dated 17 April 2023 for authorisation of the Aggregator Assurance Program (AAP or the Program) under the Competition and Consumer Act 2010 (Cth) (CCA) (the Application).

Capitalised terms used in this letter which are not defined, have the meaning given to them in the Application.

This response may be included on the ACCC's public register, and the Applicants make no claims of confidentiality in respect of the following.

1. Participation of Opt-In Lenders

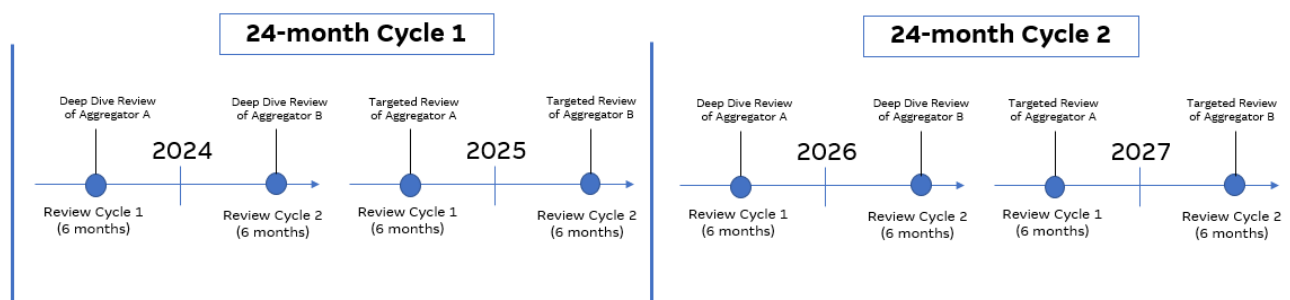
(1)(a) In relation to the Review Cycles of aggregator systems, [the ACCC's] understanding from the UJV Agreement is that:

- *the Deep Dive Reviews of aggregators' systems will take place every 24 months from as soon as practicable after the date the UJV Agreement is executed (unless otherwise determined by the Operating Committee)*
- *the first Targeted Reviews will be offered and conducted in the financial year following the financial year where the first Deep Dive Reviews were conducted, and every 24 months thereafter (unless otherwise determined by the Operating Committee)*
- *AAP Lenders will be provided the opportunity to opt-in to the relevant review, and thereby be an Opt-In Lender participating in the review cycle, 6 months ahead of when it will occur (whether a Deep Dive or Targeted Review), where the ASP will give the AAP Lender notice of the ASP Engagement Terms (as defined at clause 1.5(b) of the AAP Lender Deed).*

Could you please confirm whether the ACCC's understanding of the review cycles is correct? If not, please provide details.

1.1 The Applicants confirm that the ACCC's understanding of the Program's review cycles is correct.

1.2 The Applicants provide the following diagram to further illustrate the timing of the review cycles:



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(1)(b) What, if any, ability will there be for an AAP lender who was not an Opt-In Lender who participated in the review cycle with respect to a particular aggregator to subsequently have access to assurance review of that aggregator? For example, a lender who was not an AAP Lender at the time of the review but subsequently joined the Program or a lender who was an AAP Lender at the time but did not require an assurance review of the aggregator at the time it was conducted (i.e. they were not dealing with that aggregator at the time but subsequently decide to do so). Is it the case that these lenders would not have the opportunity to access assurance reviews of the particular aggregator conducted under the Program until the next review cycle, which in the case of a Deep Dive Review, may not be for up to 24 months?

- 1.3 The Applicants note that it is intended that the Operating Committee will clearly communicate to all lenders (and aggregators) with significant lead time, when a review will be commencing, to ensure that lenders have enough time to consider the prospect of their participation in any review cycle. The launch of the Program will be publicised to all lenders so that all lenders will have a reasonable opportunity to decide whether they wish to join a particular review.
- 1.4 The Applicants also note the importance of the equal cost sharing model to the Program and maintain that all lenders who indicate their interest in participating in any given review cycle should be subject to the same fee for participation in a review.
- 1.5 In the context of the above, the Applicants are of the view that it would be operationally challenging to manage requests for late or subsequent lender access to previous review outputs.
- 1.6 These challenges arise because:
- (a) Prior to the commencement of a review cycle, the ASP needs to determine and provide estimates for their fees so that all lenders can evaluate the financial considerations of participating in a review cycle.
 - (b) Because of the equal cost sharing model, the ASP's fee calculation is dependent on the number of lenders who, when notified, express interest in opting into a review cycle.
 - (c) Once the ASP calculates its estimated fee for its services, the ASP will split the total amount due between all lenders who have formally opted in at the start of the review cycle.
 - (d) It would not be possible for the ASP at that point, to factor into their fee calculation the potential for subsequent requests by other lenders to access any review outputs.
 - (e) Accepting late requests to access review outputs would require a complex retrospective assessment of the "late lender's" share of the review costs and then providing for an abatement of part of the fees paid, to the original lenders, which will then result in a requirement for the ASP to process part reimbursements to the original participating lenders.
- The Applicants are concerned that including this mechanism and providing this option will add undue complexity and cost to the Program. This will be the case especially if more than one lender seeks to access a review report on different dates, because each time this might occur, the share of fees payable by the opt-in lenders for that review will need to be re-calculated and adjusted, resulting in considerable administrative cost for the ASP, which will likely be passed onto participating lenders.
- 1.7 The Applicants would not support the ASP being permitted to charge a discounted fee for belated access to review outputs, because the Applicants are of the view that this approach would be contrary to the equal cost sharing model and would be unfair to lenders who when given notice, opted in at the start of the review cycle.

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- 1.8 The Applicants also note that any potential detriment incurred by a lender who is not able to access review outputs at a later stage is minimised by:
- (a) the fact that there will only be a maximum of 12 months between a Deep Dive and Targeted Review cycle for each aggregator, meaning the new lender could wait to opt-in to the Targeted Review to get some (albeit not as comprehensive) level of oversight of the aggregator's operational risk/compliance environment;
 - (b) the fact that, based on the Applicants' experience, where a review report identifies gaps in an aggregator's operational risk/compliance environment, aggregators generally take steps to address these gaps and therefore, the findings from a review cycle may not retain their currency after 6 months;¹ and
 - (c) the ability for new lenders to engage with aggregators directly for access to their action plan resulting from their most recent Program review which would provide some insight into the findings of the last review and actions taken since, prior to the commencement of the next scheduled Targeted or Deep Dive review.

(1)(c) We note the UJV Agreement specifies that 'The intention of the Parties is that the opportunity to join the Project and procure Reviews under the AAP will be open to any mortgage lender in Australia' (clause 4.1). We also note that the 'Unanimous Consent of the Operating Committee is required for any decision relating to [...] the participation by, removal or suspension of an AAP Lender from the Project' (clause 10.3). Could you please provide further information regarding the basis which the Operating Committee will make the decision relating to the participation by an AAP Lender (joining in the first instance and/or removal or suspension)?

- 1.9 The Applicants are supportive of and will encourage widespread participation in the Program.
- 1.10 With respect to decision making about participation by a lender at the stage of joining the Program, the Applicants do not anticipate that the Operating Committee will decline any lender's application to join the Program, if the lender in question agrees to be bound by the terms and conditions of the Program.
- 1.11 Clause 4.1(a) of the UJV Agreement records the intention that the Program will be open to any mortgage lender in Australia which deals with one or more of the participating aggregators and who agrees to be bound by the terms of the AAP Lender Deed. The Operating Committee's powers to admit new lenders are expressly subject to the provisions of the UJV Agreement including clause 4.1(a) (see clause 10.1 of the UJV Agreement).
- 1.12 In terms of decision making in relation to removal and/or suspension, the Applicants refer to clause 7.2 of the AAP Lender Deed, which outlines the Operating Committee's right to suspend or terminate a lender's participation in the Program for material default or for an insolvency event, which has not been rectified within the period notified to the relevant lender. Other examples of when a lender may be removed from the Program include:
- (a) where a lender has outstanding unpaid fees to the ASP, which they do not cure or rectify within the prescribed timeframe; and
 - (b) where a lender is in breach of the Confidentiality Protocols, for example, where it makes an unauthorised disclosure of information.
- 1.13 Where the Operating Committee exercises its discretion to remove a lender from the Program, the rationale for removal must be documented and communicated to the relevant lender, the

¹ This is also one of the reasons why the Program aims to perform follow up Targeted Reviews on aggregators 12 months after a Deep Dive Review.

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lender must be given a reasonable opportunity to cure the default and removal may only occur if it fails to address that default². The Program terms therefore have been designed to ensure accountability and transparency.

2. Aggregator assurance standards

(2) We note 'that the genesis of this Program was borne out of addressing the recommendations in the Royal Commission Report' and that Schedule 3 of the application outlines the relevant compliance expectations and requirements applicable to aggregators and brokers. We are seeking further information about the current standards aggregators must meet and the goals of the program:

(a) Could you please provide more information about the current 'baseline level of oversight' of aggregators' operational controls and compliance environment? For example, are there currently clear, uniform minimum standards aggregators' systems must meet?

- 2.1 Based on the experience of the five Applicants, and feedback received from aggregators, although there are common themes that each lender focuses on when reviewing the operational controls and compliance environment of an aggregator, lenders typically vary in their method and in their level of detail required to satisfy their requirements.
- 2.2 Different lenders require varying levels of assurance depending on a number of factors including but not limited to lenders' risk appetites and policy requirements. As far as the Applicants are aware, lenders do not share their risk appetites and policy requirements, and so are not aware of the baseline level of oversight that other lenders require. In short, the Applicants do not believe that there is currently a "clear, uniform minimum standard" that all aggregators are required to satisfy.
- 2.3 What is known is that assurance reviews are carried out differently and in an inconsistent manner across lenders. The Program aims to provide a standardised process to reduce the burden to aggregators and to assist lenders to obtain an improved level of assurance. However, as noted in the application, the Program is not designed to be exhaustive or to prevent some lenders continuing to adopt individual requirements from time to time which may supplement the Program review.
- 2.4 The Applicants agree with the general description of the current levels of oversight explained in the submission of the Mortgage and Finance Association of Australia in support of the application for authorisation:³

*The Royal Commission ... resulted in **significant additional regulation** introduced into the mortgage and finance broking industry.*

As well, there has been increasing prudential requirements on ADIs for example, the new Prudential Standard CPS 230 for Operational Risk Management which requires ADIs to manage operational risks associated with material service providers (which includes brokers).

We expect there to be a continued increase in regulation for the sector in coming years, for example through proposed privacy reforms and the extension of the reference checking protocol.

² See AAP Lender Deed, cl.7.1 provisions requiring 'Material Default notice' to be given to the relevant lender.

³ See [here](#), dated 22 May 2023 at [11]-[12].

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*Consequently, the breadth, depth and frequency of audits will likely continue to increase. As an industry body, we note that our members often raise with us the **tremendous regulatory burden** placed on financial firms resulting from the increase in regulation in recent years. This increase in regulatory requirements has in turn **increased operating costs for many organisations within the sector.***

*In our view, regulators should seek to encourage industry to consider innovative ways to comply with the increased regulation and consequential oversight obligations. The Assurance Program provides an **opportunity to alleviate some of those costs associated with the increased compliance burden in an innovative way.** [emphasis added]*

- 2.5 The Program is designed to result in a more consistent benchmark and more consistent assurance standards for the mortgage broking industry. This goal was recognised in the submissions of multiple interested parties (REA Group, Australian Finance Group (**AFG**) and Connective Credit Services Pty Ltd (**Connective**)).
- 2.6 The Applicants refer to the **attached** Draft Review Scope for the Program. While this Review Scope is not finalised, it may provide the ACCC with an indication of the proposed baseline standard for reviews which will be completed as part of the Program.
- 2.7 The Applicants agree with the submission to the ACCC by Connective, that currently there are two broad categories of review approaches, being full audits and attestations. Connective's submission outlined that:⁴
- (a) Full audits require significant amounts of work, usually a combination of detailed questions (between 40-100) and control testing of sample loan files. In 2022, Connective stated it completed eight lender audits; and
 - (b) Attestations involve a shorter list of questions, requiring a shorter response or a more generic attestation, often with a request for supporting documentation. In 2022, Connective stated it had completed six lender attestations.
- 2.8 REA Group's submission to the ACCC also highlighted the varying amount of time it can take to complete a review of an aggregator, specifically noting that in 2022 the reviews it participated in ranged in length from 5 to 200 hours.⁵

(2) (b) If not already addressed above, please provide further detail on how the proposed Aggregator Assurance Program will aim to directly address outcomes and regulations borne out of the Royal Commission, including any minimum standards required under the relevant prudential standards/regulations.

- 2.9 The Program aims to address the recommendations that came out of the Royal Commission.
- 2.10 The Royal Commission report outlined that Australian financial services licence (**AFSL**) holders, and Australian Credit Licence (**ACL**) holders have an overarching obligation to '*do all things necessary to ensure*' that the financial services or credit activities authorised by their licence are provided '*efficiently, honestly and fairly*'. They are also obliged to maintain their own competence to provide the licenced services and to ensure that their representatives are both

⁴ See [here](#), dated 22 May 2023 at [7].

⁵ See [here](#), dated 22 May 2023 at page 2.

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adequately trained and competent to provide those services. That is, they are required to have the capacity to deliver services with reasonable care and skill.⁶

- 2.11 Specifically, Recommendation 1.6 of the Royal Commission report, *'Misconduct of Mortgage Brokers'*, recommended that ACL holders should:
- (a) be bound by information-sharing and reporting obligations in respect of mortgage brokers similar to those referred to in Recommendations 2.7 & 2.8 for Financial Advisers; and
 - (b) take the steps in response to detecting misconduct of a mortgage broker as those referred to in recommendation 2.9 for Financial Advisers.
- 2.12 Recommendations 2.8 requires AFSL holders to report 'serious compliance concerns' about financial advisers to ASIC on a quarterly basis.
- 2.13 The Applicants note that one of the objectives of the Program is to protect consumers by equipping mortgage brokers and lenders to support good consumer outcomes.
- 2.14 By granting lenders, as product issuers, oversight of aggregators' control environments across the distribution of home loans by mortgage brokers, lenders can take steps, in addition to the steps already taken by aggregators, to mitigate the risks of fraud and misconduct.
- 2.15 Equally, the insights from review findings from the Program, once shared with participating aggregators (at no cost to the aggregator), will also enable them to consider ways to enhance their own risk management practices and further ways they can implement stronger operational controls.
- 2.16 Therefore, the Program provides an avenue for both lenders and aggregators to proactively assess their practices, and their operational and compliance environment on a periodic basis to prevent incidents that could otherwise negatively impact consumers.
- 2.17 By performing an industry wide review, and by reducing the burden on aggregators to respond to individual lender reviews, the Program will enable aggregators to use more time and resources to proactively identify concerns relating to misconduct.
- 2.18 Aggregators have a large portion of their broker members as credit representatives under their ACL, and accordingly aggregators themselves must gain a level of assurance that these credit representatives are operating in a manner that complies with the aggregator's *National Consumer Credit Protection Act* obligations. As has been outlined in submissions by REA Group, Connective and AFG, the Program will provide a streamlined industry solution to Aggregator monitoring that will increase resourcing capacity of the Aggregators to monitor their broker network to identify concerns relating to misconduct. This in turn will also lead to improved consumer outcomes.
- 2.19 The Draft Review Scope **attached** will continuously evolve to ensure there is adequate oversight and coverage of key prudential standards and regulations and ASIC's consumer credit legislation and regulations. For example, APRA recently finalised CPS 230,⁷ a new cross-industry standard for Operational Risk Management which has now prompted the Applicants to further consider how best to obtain oversight over mortgage brokers to comply with this prudential standard.

⁶ Royal Commission Report, page 9.

⁷ See [here](#). See in particular [49], which outlines how APRA related entities must manage the material operational risks associated with receiving mortgage brokerage services.