



ASIC

Australian Securities & Investments Commission

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Our Reference: **ACCC Authorisation for MFAA**

2 March 2009

Attention: Mr Shane Chisolm
Acting Director
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Shane,

Mortgage and Finance Association of Australia (MFAA) application for revocation and substitution A91118 – interested party consultation

Thank-you for your letter dated 27 January 2009 inviting ASIC to comment on the MFAA's application for authorisation of its Disciplinary Rules.

ASIC considers that industry organisations can play an important consumer protection role where raising industry standards and investigating and appropriately responding to instances of member misconduct are concerned.

We note that you have invited comment more specifically in relation to Disciplinary Rules 2.2.7, 4.7.1A and 4.8.3 and Sections 2.4 and 4.7.

We wish to make some general comment in relation to Disciplinary Rules 2.2.7 and 4.8.3.

Refusing to cooperate with an investigating officer

Disciplinary Rule 2.2.7 states that a member who refuses to cooperate with an Investigating Officer may be guilty of misconduct and will be subject to the Disciplinary Rules – the ultimate sanction for misconduct being expulsion from the MFAA.

We understand that this Rule has been included to strengthen the powers of an Investigating Officer on the ACCC's request.

We agree with an Investigating Officer having strengthened powers, however we note that there may be circumstances where a member may appear to agree to cooperate with an Investigating Officer, but for some reason delays, prevaricates or takes such a considerable time to cooperate so as to make the process ineffective. We consider that the powers of an Investigating Officer may be strengthened even further if a member is required to co-operate *bona fide*, with the reasonable requests of an Investigating Officer.

Powers of the Disciplinary Tribunal

Under Disciplinary Rule 4.8.3, the Disciplinary Tribunal may in its absolute discretion, reconsider and vary any decision or order relating to sanctions made by the Tribunal in respect of any penalty it imposed on a member.

We are concerned that this Rule may raise procedural fairness issues as this rule does not appear to consider any limits on the Tribunal's discretion, for instance the circumstances in which the Tribunal can reconsider or vary a decision (e.g. because of error of fact or new information coming to light), nor any mechanisms for appeal or review for a member.

If you have any queries in relation to this letter, please do not hesitate to contact me.

Yours sincerely,



Delia Rickard
Senior Executive Leader
Consumers & Retail Investors
ASIC