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Dear Dr Chadwick

**Third Line Forcing Notifications to AHL Investments, Mortgage Choice Limited, Virgin Money Australia, Virgin Money Limited and ING Bank Australia Ltd**

The Mortgage & Finance Association of Australia (MFAA) would like to provide a submission to the ACCC in relation to the following Notifications.

N92787 lodged by AHL Investments Pty Ltd (Aussie Home Loans)  
N93329 lodged by Mortgage Choice Limited  
N93141 and N93142 lodged by Virgin Money Australia and Virgin Money Limited  
N93186 lodged by ING Bank Australia Ltd

**Background**

The MFAA is the peak body for the Australian mortgage & finance industry with some 11,400 members. At least two other associations operate in the sector enrolling mortgage and/or finance brokers. MFAA estimates there are about 15000 brokers in the industry.

All MFAA members are required to belong to an ASIC approved EDR scheme such as the Credit Ombudsman Service Limited (COSL) or another relevant EDR Scheme, which is a requirement under the *National Consumer Credit Protection Act* (NCCP) since 2010).

Our members who actually write loans must attain MFAA Accreditation, titled Accredited Mortgage Consultant (AMC) or Certified Mortgage Consultant (CMC). Members must be covered by professional indemnity insurance, have provided and passed probity checks (national Police and Credit checks) and must meet minimal educational and experience requirements, thereby indicating a high standard of professionalism. However, see later in this submission on page 3, this accreditation regime has commenced transition into a newer, even more rigorous regime which focusses on the credit advisory role of brokers. The new accreditations are awaiting final approval by the ACCC of the MFAA's Certification Trade Marks (CTM) applications; interim approval granted on 21 November 2011 – see Attachment A.

It is the MFAA's belief that the enhanced professionalism of its members undertaken since 2007, as evidenced by requiring the *highest* educational standards and ethical conduct from its members, will ensure that the benefits of these changes will translate into greater benefit for the borrowing public, through better knowledge and wider choice.

In 2010, the MFAA conducted a comprehensive Strategic Review and a member survey. Feedback from members stated:

*“The MFAA should be striving to assist members achieve higher standards of professionalism compared to non-members” and*

*“in making MFAA the ‘Member’ association of choice, the MFAA should require its members to adopt and adhere to higher levels of professional standard than those that apply to non-members” and*

*“Members would like to see consumer’s view an MFAA member as a member of an association with standards in excess of the minimum regulatory standards of the day.”*

### **Significantly Higher Standards**

The standards imposed on our members are now significantly higher than those imposed on mortgage brokers under legislation such as the NCCP. The MFAA regime covers many ethical, educational and professional issues that the NCCP does not and will not cover. It provides a much higher level of consumer protection than the NCCP and it is comprehensively enforced by the MFAA, mainly through taking complaints from any source (even including anonymous complainants, where there is sufficient information to pursue a matter), comprehensive investigations by an arms' length investigator and, finally, through referral of appropriate matters to the Disciplinary Tribunal and enforcement of its Determinations – see page 7 referring to expulsions and suspensions.

However, one of the most significant differences between the MFAA and other associations is its insistence on higher educational standards, which are now even more significant than was the case in 2007. The MFAA requires a Diploma as a minimum (plus industry specific professional development) compared with nothing at all or just a Certificate IV, which the MFAA made mandatory for new inexperienced members from 2004 and existing members from 1 July 2009. In fact the MFAA cancelled the membership of approximately 1500 members who had not attained this minimum standard by the relevant date and publicised the

fact. This, of itself indicates that the highest standards in the industry are rigorously enforced by the MFAA.

Even the membership application process is rigorously enforced as to standards required of members, by allowing for applicants who are refused membership the right to appeal to an independent umpire, namely the MFAA Tribunal. The Tribunal examines the application *ab initio*, not solely relying on information provided by the Council as to their reasons for refusal.

An example of the MFAA higher standards is demonstrated by the fact that the NCCP requires brokers to recommend finance which is 'not unsuitable' for a borrower, while the MFAA Code imposes a higher, more positive requirement that members only recommend finance which is 'appropriate' for the borrower.

Arising from the Strategic Review the following enhancements were made to the MFAA's professional and educational standards:

- Since January 2011, all members are required to attain 30 CPD hours per annum (compared with only 20 hours pa required by the NCCP).
- From January 2011, all new members have been required to hold a Diploma in Financial Services (Finance and Mortgage Broking Management) or hold a Certificate IV in Finance and Mortgage Broking and with a commitment to complete the Diploma by 1 July 2012.
- All existing members will be required to hold the Diploma by 1 July 2012.

**NB:** as well as the Diploma requirement (a higher standard) members are required to pass a separate MFAA assessment on practical case studies to ensure that they have attained the higher standards required by the MFAA of its members.

In comparison, the NCCP currently mandates no educational requirements and in the future will only require a minimum of Certificate IV, which will not become effective until 30 June 2014.

## **New Education Requirements**

The above mentioned 'new educational requirements' are part of the MFAA's revised accreditation structure, which is now being transitioned and by July 2012 will have totally replaced the structure that applied in 2007, once the CTMs are in place:

- All new members with less than two years' experience will hold the title "MFAA Associate Credit Adviser™". These members will be required to commit to a formal mentoring program and to attain a Diploma in Financial Services (Finance and Mortgage Broking Management) or equivalent.
- Members with at least two years' service will hold the title "MFAA Credit Adviser™" and will be required to attain a Diploma in Financial Services (Finance and Mortgage Broking Management) or equivalent.
- Members with at least five years' service and a Diploma in Financial Services (Finance and Mortgage Broking Management) or equivalent will

be entitled to hold the title “MFAA Certified Credit Adviser™” upon completion of a further certification program.

Further information about MFAA membership standards is included below.

## **MFAA Code of Practice**

The MFAA strongly advocates ethical business practices by its members (MFAA Code of Practice), while working closely with federal and state Governments to ensure its membership is equipped to provide honest and fair service to consumers. The MFAA achieves these goals by providing industry specific education, as well as compliance and legal information and assistance, both to its members and consumers who contact the MFAA. Anyone can access all of the MFAA’s Governance Documents directly from the website [[Guidelines for Public Access](#)].

The MFAA backs up these initiatives by providing a means of enforcing its policies through the possibility of sanctions, which was *Authorised* by the ACCC in 2004 and again in 2009<sup>1</sup>.

As part of its Disciplinary process and following complaints to the MFAA, a number of members have been expelled for ‘misconduct’. The MFAA subsequently publishes that information on its website where consumers can easily access those names, as well as informing the ASIC of those expulsions and releasing the information to the media.

The MFAA provides an avenue for consumers to enquire about what constitutes appropriate behaviour in the broker community, and also provides assistance to consumers through its website - in the form of various Guides about:

1. types of home loans
2. investment loans
3. interest rates
4. mortgage insurance
5. mortgage fees
6. grants and assistance
7. the mortgage process
8. credit references
9. a checklist for buying a first home
10. who’s who in the mortgage industry
11. mortgage terminology
12. questions to ask a mortgage provider
13. borrowers’ rights
14. consumer protection, and
15. internal dispute resolution processes.

All of these Guides (located on the MFAA website “[Essentials of Borrowing](#)”) indicate the depth of the MFAA’s commitment to ensuring that consumers are better fitted to tackle the complex world of home loans in the more complex environment they now face.

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<sup>1</sup> The ACCC authorised the Mortgage Industry Association of Australia’s disciplinary rules (now the MFAA). “The rules are likely to help member mortgage brokers to act ethically and professionally in the industry, resulting in a net public benefit. The rules set out standards of conduct for the industry, and a process for an independent tribunal to hear allegations of misconduct against members.” The tribunal has the power to sanction or expel a member found guilty of misconduct. **MR 015 (19.2.04)**, which was again Authorised on 27 May 2009 at A91118.

As a further indication of our bona fides in this area, the MFAA won the NSW 2006 Fair Trading Award *Business/Industry Association Award Metropolitan* category “[i]n recognition of a valuable contribution to raising awareness of consumer rights among the people of New South Wales.”

The MFAA is concerned that it is not only seen to be an advocate for consumer protection but that it also tests its own claim to that status. To this end, over the years, the MFAA has conducted a number of surveys which attempt to measure the ‘quality’ of the relationship between its members and consumers and compliance with the MFAA Code of Practice and relevant regulation

In addition, we are aware of a ‘Mystery Shop’ campaign carried out by a company called CoreData Research Australia in September 2011, which covered banks, credit unions and brokers (over 90% of whom were MFAA members). The study showed that brokers attained the highest score overall (77 for brokers vs 74.1 for banks and 73 for credit and unions). Brokers also topped the scores in the categories of ‘assurances’, ‘compliance’, ‘understanding’, ‘intention’ and ‘environment’ in this survey.

### **MFAA Membership Standards**

As noted above, by 1 July 2012, after undergoing a rigorous screening and verification process to apply for membership, MFAA members will initially be accepted as a “MFAA Associate Credit Adviser™”. Through mentoring, training and experience, an MFAA member can become an “MFAA Credit Adviser™” and then progress to the level of “MFAA Certified Credit Adviser™”.

Under the NCCP transitional licensing provisions ASIC required Australian Credit Licence applicants to have at least two years’ relevant industry experience or to be mentored until that two years had been acquired by undergoing mentoring (see Regulatory Guide<sup>2</sup> [RG206.58](#)).

In that Regulatory Guide ASIC insisted that licence applicants needed to be undertaking an MFAA mentoring program to obtain an ACL, viz:

“[i]n recognition of this, we will allow people who are currently being mentored according to the Mortgage and Finance Association of Australia (MFAA) mentoring guidelines (as current at the date of publication of this regulatory guide) to be responsible managers on the basis they will successfully complete their mentoring.”

In addition to the requirements outlined above, before a loan writer is admitted to MFAA membership and attain an accreditation level s/he must:

- successfully complete the MFAA Initial Compliance Pack with a 90% pass. The course covers the National Credit Code (NCC), the Privacy Act,
- the Trade Practices Act (now the *Competition and Consumer Act*), the AML / CTF Act and Standard Operating Guidelines;

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<sup>2</sup> RG206 provides guidance on how credit licensees ... can meet their organisational competence and training obligations

- s/he must belong to, or be covered by a membership of, the ASIC approved Credit Ombudsman Service (COSL) or another ASIC approved EDR scheme, currently FOS; and
- s/he must have insurance cover for a minimum of \$2 million Professional Indemnity (PI) cover, with at least 12 months' run-off cover, which of itself was an MFAA initiative.

The MFAA notes that these last two items above are now required by the NCCP as well.

Once admitted to membership the member must abide by the MFAA Constitution, the MFAA Code of Practice and the MFAA Disciplinary Rules, which were *Authorised* by the ACCC in 2004 and again in 2009.

Additionally, members must:

- accumulate 30 Continuing Professional Development (CPD) hours each year and provide evidence to the MFAA annually on renewal. (Note that the NCCP requires only 20 hours for Australian Credit Licence (ACL) holders alone, whereas the MFAA requires its higher standard not only for its ACL holder members but also from its Credit Representative members and the employees of ACL holders who are engaged in loan writing activities); and
- sign a detailed declaration regarding probity etc and
- on renewal each year must renew that declaration, including providing up to date evidence of current Professional Indemnity cover and EDR scheme membership.

**NB:** the MFAA cancelled the membership of one member who had 'fudged' his CPD records.

### **MFAA Disciplinary Rules**

The MFAA, as a professional association, requires a high level of professionalism from its members and so has instituted the MFAA Disciplinary Rules (the Rules) (authorised by the ACCC) and under which members may be sanctioned for 'misconduct' as defined in the MFAA Code of Practice.

The Rules provide for an investigation of complaints by an Investigation Officer (who is external to the MFAA) and a disciplinary process conducted by the MFAA Disciplinary Tribunal, comprising either the Chair or Deputy Chair (both legally qualified and external to the MFAA) and a panel of two industry members drawn from a large panel of experienced MFAA members. The Chair of a convened panel verifies that each industry member of that panel has no conflict of interest with the matter being determined.

Since its inception in 2004 the Disciplinary Process has dealt with 558 Complaints, of which 338 were referred to the Tribunal and 26 of those resulted in the member's expulsion from the MFAA. There have also been 20 suspensions from membership for lesser misconduct, generally allowing for the suspended member to 'return' after a specified time. In addition, various other

sanctions have been ordered against MFAA members where the Tribunal has found misconduct.

Under the MFAA Constitution (38.1), expulsions are required to be notified to ASIC and are advised to other members and the public via media release and in MFAA publications. A permanent notice of each expulsion and suspension is prominently displayed on the MFAA website, for anyone who seeks such information.

A copy of the most recent Annual Report of the Disciplinary Tribunal, written by its Chair, Hank Spier, is attached.

This process is arguably a more stringent process than that of any other finance industry Association, in that it provides consumers with the ability to reach a better informed decision than would otherwise be the case, especially regarding their choice of a professional industry participant with whom they wish to conduct their business.

## **Governance**

As well as setting high standards for its 11,400 members, the MFAA also sets high standards for its own operations, thereby allowing membership standards to be continuously reviewed and enhanced.

It is governed by a Board of 12 Members, which is elected each year via a process involving the election of state councillors in which all members are eligible to vote. 82% of MFAA members are individual loan writers, some 16% are broker businesses and the remainder includes aggregator groups, mortgage managers, lenders/funders and service providers to the industry. These elections are conducted on-line for the MFAA by a third party provider company that specialises in running on-line elections.

In addition to the Board, the MFAA governance structure comprises four National Committees (National Brokers Committee; National Mortgage Managers Committee; National Equipment and Commercial Finance Committee; and the National Lenders Committee). The chair of each Committee becomes a Board member by invitation of the Board.

Additionally there are six (6) State/Territory Councils elected annually by the relevant state/territory membership, comprising in total some sixty four (64) members. The chair of each state/territory council becomes a Board member. In February 2011, the Constitution was amended by Special General Meeting of the members to allow the Board to appoint an additional (independent) Director. Such an appointment was first made in November 2011.

Further, in most states there are State Broker Committees, State Equipment and Commercial Finance Committees and other special committees/focus groups.

The Board is subject to the *MFAA Board Corporate Governance Code* (which applies equally to State Councils and each Committee). That Code deals with issues such as:

- the Role(s) of the Board, State Councils and Committees;
- Director Independence;
- access to Independent Advice;

- Directors' Conduct; and
- Conflicts of Interest.

Each year Board members are required to participate in a training program on their responsibilities as Directors. This is carried out by either the Australian Institute of Company Directors or the Chartered Secretaries Association.

Summaries of all Board Minutes, as well as those of the various committees of the Board, are displayed on the MFAA website for the information of all members. The MFAA's Annual Accounts are audited and displayed for public information on the MFAA website.

## **Education**

Yet another aspect of the MFAA's strict requirement for professionalism and the raising of standards in the industry is the MFAA's industry specific education program.

Since the MFAA education program started in 2004 it has received approximately 65000 course registrations.

The MFAA's educational standards are demanding and require more than cursory knowledge of a topic or process. Many of these courses are provided or offered simultaneously by third party providers who are themselves expected to also maintain high standards.

## **Conclusion**

It is the MFAA's submission that there will be no diminution of the Public Benefit if the original Notifications are continued and in fact it will actually be strengthened by the new standards of professionalism and education that the MFAA insists upon.

The MFAA has extended the legislative requirements on ACL holders to encompass its entire loan writer membership, *not* just the ACL holder members which, because it is a higher standard than required by the rest of the industry, is a further public benefit because it strengthens consumers' capabilities to make reasoned and reasonable decisions about their finance requirements, in our opinion.

The MFAA further welcomes the recognition by some broker groups/lenders of the high levels of professionalism fostered by the MFAA. Please do not hesitate to contact me should you seek further information or clarification on any of the matters raised in this submission.

Yours sincerely



**PHIL NAYLOR**  
CHIEF EXECUTIVE OFFICER






**Initial assessment of Certification Trade Mark applications 1354620 (MFAA Associate Credit Adviser), 1354621 (MFAA Credit Adviser) and 1354623 (MFAA Certified Credit Adviser) lodged by the Mortgage and Finance Association of Australia**

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Initial Assessment of the above Certification Trade Mark (CTM) applications.

The ACCC's initial assessment is that it is satisfied that:

- (a) the approved certifiers demonstrate the attributes necessary to competently certify the services in respect of which the CTMs are to be registered;
- (b) the rules governing the use of the CTMs would not be to the detriment of the public; and
- (c) the rules governing the use of the CTMs are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Competition and Consumer Act 2010* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

The ACCC proposes, subject to any request for a conference or lodgement of written submissions pursuant to the Trade Marks Regulations 1995, to issue a final assessment approving the CTM application.

Signed.......... (Deputy Chair)

Date.....21 November 2011.....