

Your Reference: 60808
Our Reference: 24302/16



29 September 2016

Darrell Channing
Director
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Level 1, 11 Mounts Bay Road
Perth WA 6000
GPO Box 9827, Perth WA 6001
DX 158 Perth

Telephone: +61 8 9261 4000
Facsimile: +61 8 9261 4227
www.asic.gov.au

Dear Mr Channing

**Finance Brokers Association of Australia (FBAA) application for authorisation A91554 & A91555—
interested party consultation**

Thank you for your invitation to ASIC to comment on the FBAA's application for authorisation of its Disciplinary Rules and amendments to its Constitution.

Entities involved in consumer credit activities are required to comply with obligations of the National Consumer Credit Protection Act (2009)(National Credit Act).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).

While there is no requirement under the National Credit Act for licensees to be members of the FBAA or any other peak 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 views in relation to the operation of the proposed Disciplinary Rules and the overall FBAA governance regime are set out below:

Potential concerns

We note that while the Code of Conduct & Dispute Resolution Service Rules (Attachment 3) is "Version 19 April 2016", there are a number of references which appears outdated, such as reference to the Banking and Financial Services Ombudsman, which no longer exists. In addition there is no reference to the National Credit Act which came into effect in 2010 and replaced various State legislations.

There appear to be circumstances where a member would be able to comply with the Code of Conduct without meeting the obligations of the National Credit Act. For example, the National Credit Act imposes responsible lending obligations on licensees, which are not referenced in the Code of Conduct. This means that the Code of Conduct appears to set a lower level of compliance than the minimum required by the relevant law, particularly in respect to the affordability of a proposed consumer credit contract which is one of the fundamental parts of the consumer credit regime.

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

The proposed Disciplinary Rules appear to provide some obligations on members which are additional to the obligations of the National Credit Act. The FBAA requirements cover a wider area of credit products and in some instances may have higher requirements than required by current national legislation.

For example, FBAA members must ensure that they "act in the best interest of the client", which is arguably a slightly higher threshold than the obligations embodied in the National Credit Act.

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

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 credit licensee. Participation in the mortgage industry remains accessible irrespective of FBAA membership.

Likely scenario should the ACCC not authorise the FBAA rules;

Should the ACCC not authorise the FBAA rules, and as a result the FBAA not be in a position to effectively enforce its code of conduct, this would reduce the potential public benefit associated with FBAA 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.

Yours sincerely



Christopher Green
Group Senior Manager - Credit
Deposit-takers, Credit and Insurers