

26 July 2017

ASIC Enforcement Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ASICenforcementreview@treasury.gov.au

Dear Sir or Madam

ASIC ENFORCEMENT REVIEW CONSULTATION PAPER 4 – INDUSTRY CODES

Thank you for the opportunity to provide feedback on the “*ASIC Enforcement Review, Position and Consultation Paper 4, Industry Codes in the Financial Sector*” (**Position Paper**).

The Australian Finance Industry Association (**AFIA**)¹ is the industry advocate for Australia’s finance sector. AFIA is the largest association of consumer, commercial and wholesale financiers, including ASX-listed companies, customer owned and regional banks, captive financiers, fintech firms and credit reporting bureaus. Our members (list attached) are a core part of a dynamic finance industry that contributes \$140 Billion to Australia’s National GDP, employ over 450,000 people nationwide and fund hundreds of billions of assets to businesses throughout the country. Our diverse membership and market share sees us uniquely placed to represent the interests of our members to federal and state governments, and Australia’s financial and corporate regulators.

AFIA has significant concerns with the proposed co-regulatory model. We are of the view that it is not fit for purpose given its potential to hinder innovation and growth in circumstances where no evidence-based shortcoming that would justify the model has been demonstrated. We also question the basis for the assumption that it will deliver heightened consumer confidence given it appears an original concept both for Australia and internationally.

I Fit for purpose

AFIA recognises the need for voluntary industry codes in the context of a vibrant economy.

Voluntary industry codes developed by industry in consultation with other key stakeholders are able to address key areas to enable industry participants to standardise operational procedures in circumstances which do not produce anti-competitive effects yet yield productivity enhancements for businesses and customers alike. This is the principal impetus for developing industry codes.

An example is the recent pilot project exploring the potential benefits of distributed ledger technology in the context of commercial property lease bank guarantees. A key challenge (to realising blockchain’s potential to drive out unnecessary economic costs) in this instance is

¹ Formerly the Australian Finance Conference (AFC), established in 1958, the Association resolved to change its name to better reflect its membership advocacy role and re-launched as the Australian Finance Industry Association from 1 June 2017.

non-standardised loan guarantee documentation. This is precisely the type of issue for which voluntary industry codes can be applied to develop standardised solutions over time.

However, we believe the proposed co-regulatory model where non-industry participants are potentially able to significantly influence code-design to arrive at an outcome that will challenge industry to efficiently and effectively implement is not in Australia's best interests as it is not fit for purpose. It will not facilitate productivity enhancements, as highlighted by the above example, but will produce anti-competitive outcomes for both customers and businesses.

II Consumer Confidence

AFIA acknowledges that industry codes can serve to improve consumer confidence in an industry. However, in a thriving market economy, consumer confidence is inextricably tied to vibrant market activity and performance. In our view, the two concepts cannot be considered in isolation of each other. We are concerned that the consultation appears to have been developed assuming this not to be the case. It is our view that, as a consequence, the model has a fundamental shortcoming in its apparent design that does not build from this linkage and it will inevitably potentially have the effect of hindering market activity and undermining consumer confidence across the sector.

We further note that taking the international position into account, this may explain why the United Kingdom, Hong Kong and Canada, do not have an industry code regulation model like the one put forward in the Position Paper. Their pro-growth approaches recognise that monitoring bodies are most effective when they facilitate productive behaviour rather than compel individual businesses to transact with customers on terms they set. This differs to the proposed Australian model where businesses may potentially be bound to transact with their customers in a manner that inhibits productivity and innovation and can be referred to ASIC for investigation for non-compliance with the code.

As referred to above, a key concern with the proposed mandatory industry code model is that industry will not actually develop the industry codes. Rather codes will be developed for them by a body comprising consumer advocates, experts and some industry representatives. Given industry will bear the risk of non-compliance, the obligation to implement and the cost to do so, we submit that, as a minimum it would be appropriate for the chair and three-quarters of its membership should be drawn from industry for that body to have legitimacy given the primary purpose of industry codes.

ASIC's success as a regulator can be attributed to Greg Medcraft's guiding principles to '*promote investor and consumer trust and confidence in the system and ensure fair and efficient financial markets.*'² The proposed co-regulatory model does not achieve these outcomes, potentially ignoring the second equally relevant concept of a fair and efficient financial market.

In closing, it is AFIA's view that consumer confidence is built by individual businesses providing their customers with the products they want at a price they are prepared to pay. It is not built by establishing a further layer of what is already a substantially layered regulatory environment for the finance industry with the attendant cost outcome that is difficult and expensive to absorb.

² "Medcraft has reason to crow", *Australian Financial Review*, page 40, 18 July 2017.

Thank you for inviting our submission to this policy space and we encourage you to contact us for further clarification on our position outlined above.

If you have any queries in relation to our submission please do not hesitate to contact me on 0419 967 918 or Paul Stacey, Associate Director – Policy on 0400 438 623.

Kind regards

A handwritten signature in black ink, appearing to read "Helen M. Gordon". The signature is written in a cursive style with a long horizontal flourish underneath.

Helen Gordon
Chief Executive Officer

Attachment:
AFIA Members

AFIA MEMBERS

255 Finance
 Alleasing Group
 Allied Credit
 American Express
 ANZ Banking
 Corporation/Esanda
 Attvest
 Australian Structured
 Finance
 Automotive Financial
 Services
 Avis Budget Group
 Bank of China
 Bank of Queensland
 Bendigo & Adelaide Bank
 BMW Australia Finance /
 Alphabet Australia
 Branded Financial Services
 Cashflow Funding Limited
 Caterpillar Financial
 Australia
 Cisco Systems Capital
 (Australia)
 Classic Funding Group
 CNH Industrial Capital
 Australia
 Commonwealth Bank of
 Australia
 Credit Corp Group
 Dun & Bradstreet
 East Coast Car Rentals
 Eclix Group / FleetPartners
 Elantis Premium Funding
 Elemental Financial Corp /
 Custom Fleet
 Europcar Australia & NZ
 Experian Asia Pacific
 Equifax (Veda)
 Finance One
 Fleetcare
 FlexFleet
 FlexiGroup
 Fuji Xerox (Finance)
 Australia
 Genworth
 Group & General Finance
 Hertz Australia
 HP Enterprise Financial
 Services
 HSBC Bank Australia
 Hunter Premium Funding
 IBM Global Financing
 Indigenous Business
 Australia
 John Deere Financial
 Komatsu Corporate Finance
 Kubota Australia Finance

Latitude Financial Services
 LeasePlan Australia
 Leasewise Australia
 Liberty Financial
 Macquarie Leasing
 Macquarie Premium
 Funding
 Max Recovery Australia
 McMillian Shakespeare
 Group
 ME Bank
 Mercedes-Benz Financial
 Services
 MetroFinance
 MoneyTech
 National Australia Bank
 Nissan Financial Services
 On Deck Capital
 ORIX Australia
 PACCAR Financial
 Pepper Money
 Premium Funding Limited
 Principal Finance
 QFleet
 QPR Premium Funding
 Qudos Bank
 RABO Equipment Finance /
 De Lage Landen
 RAC Finance
 RACV Finance
 Ricoh Finance
 Scottish Pacific Business
 Finance
 Selfco Leasing
 Service Finance
 Corporation
 sgfleet / nlc Pty Ltd
 SmartGroup
 Summit Fleet Leasing &
 Management
 Suttons Motors
 Thorn Group
 Thrifty Australia & NZ
 TL Rentals
 Toyota Finance Australia
 Volkswagen Financial
 Services
 Volvo Finance
 Walker Stores
 Wells Fargo International
 Westlawn Finance/ North
 State Finance
 Westpac Banking
 Corporation/St George Bank
 / Bank of Melbourne /
 Capital Finance Australia
 WEX Australia

Wingate Consumer Finance
 Yamaha Finance

ASSOCIATE MEMBERS

Ashurst Australia
 Alfa
 Bynx Australia
 CAFG Australease
 Cashflow Funding Limited
 ClarkeKann Lawyers
 Clayton Utz
 Colin Biggers & Paisley
 Commercial & Asset
 Finance Brokers
 Association
 Cornwall Stodart Lawyers
 Credit Sense Australia
 Dibbs Barker
 DLA Piper Australia
 FIS Systems Pty Ltd
 FTI Consulting
 Genpact
 Hall Chadwick
 Henry Davis York
 Herbert Smith Freehills
 Holman Webb Lawyers
 HPD Software Asia Pacific
 Insyston
 International Decision
 Systems
 Kemp Strang
 King & Wood Mallesons
 KPMG
 Lock Finance NZ
 Lowe Lippmann Trakman
 FS
 Macpherson + Kelley
 Lawyers
 Norton Rose Fulbright
 Australia
 Pacific Invoice Finance NZ
 Polczynski Lawyers
 Realtime Computing
 Red Planet Software
 Scottish Pacific Debtor
 Finance NZ
 Sofico Services Australia
 Sword Apak
 Trace Personnel
 Traction Group
 Xeberg
 White Clarke Asia Pacific