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14 August 2017

The Manager
Banking, Insurance and Capital Markets Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: lenderrules@treasury.gov.au

MFAA Submission on New APRA Powers to Address Financial Stability Risks – Non-ADI Lender Rules

Thank you for the invitation to make a submission on this proposal.

Background

The Mortgage & Finance Association of Australia (**MFAA**) represents over 13,000 members and is the leading industry association for finance brokers and non-bank lenders in Australia.

Overview

This submission supports four key positions.

- The MFAA strongly supports any initiatives designed to ensure financial stability in the Australian economy.
- The MFAA is not convinced that this additional power conferred upon APRA is necessary to address financial stability risks.
- If the initiative proceeds, its scope needs better definition.
- There is potential for the initiative to negatively impact competition and innovation and may adversely affect consumers who form part of a sector underserved by ADIs.

Support for initiatives to address financial stability risks

As noted in our overview, the MFAA strongly supports any initiatives to ensure the financial stability of the Australian economy.

We accept that it is important for government to understand the size of the non-ADI market in relation to the credit sector. The MFAA does not oppose appropriate amendments to the

Financial Sector (Collection of Data) Act 2001 (FSCODA Act) to ensure this data is collected.

The power should be limited

The powers that APRA can exercise are not clearly defined in the exposure draft. Whilst the drafters and the government might have a clear idea when and how intervention might be applied, we are concerned that there are no limitations in the legislation. As a result, future governments and future regulators could interfere in the sector in a way which is not currently contemplated.

For example, there could be an application of a capital adequacy requirement to non-ADIs. We submit this is completely inappropriate having regard to the nature of non-ADIs.

We are also concerned that the proposed APRA powers are likely to overlap with those held by ASIC.

Our understanding is that credit provided by non-ADIs represents less than 5% of credit provided in Australia. We do not understand how this small market segment could create material financial stability risks. In assessing the size of non-ADI lending, it is important to avoid double counting. This is challenging because many loans marketed by non-banks are ultimately ADI funded.

The initial government announcement foreshadowed the grant of a 'reserve power'. However, the Exposure Draft goes much further and has few restrictions on the exercise of the power. It is appropriate for the power to be appropriately limited to ensure that the government's intention is achieved and the risk of abuse of power removed.

We are concerned that the mere possibility of intervention may reduce industry competition, innovation and individual initiative. The ability of small unregulated organisations such as Aussie Home Loans has in the past triggered significant change to competition and produced improved consumer outcomes. It is important that additional regulation does not deter new industry entrants or discourage competition.

If the initiative is to proceed, it is essential that powers are more clearly defined so as to address these concerns.

Is further regulation needed?

The government, through its regulators and agencies, already has appropriate tools to regulate lending through the *National Consumer Credit Protection Act 2009* and the licensing of lenders and intermediaries. If the government decides that it is appropriate to intervene in the operation of Australia's credit markets, this legislation provides the appropriate resource. It is undesirable, inefficient and confusing for regulation to be imposed through multiple legislative instruments.

The credit industry is currently having to deal with a significant number of initiatives some of which are listed in the schedule below. The MFAA has been a supporter and a contributor to appropriate legislation and we maintain that position however, we support regulation when regulation is appropriate. Are we not in danger of going too far?

We contend that the range of initiatives currently established, under review or proposed is already having substantial impact on the credit industry. Additional activity in new proposals may escalate existing uncertainty within it. Further, regulatory uncertainty has plagued the capital markets for the last 10 years and the reaction of many investors when the application

of legislation is unclear is often to withdraw from the market. This can materially adversely affect funding of non-ADIs.

Scope of proposal

In this section, we make some general comments on the exposure draft.

1. The legislation provides that a trading corporation will be a registrable corporation and will be required to report to APRA if its Australian business activities include '*the carrying out of activities, whether directly or indirectly that result in the funding or origination of loans or other financing.*' This is an extremely broad definition and may needlessly catch the activities of intermediaries and mortgage managers and other entities who are not lenders. In addition, the provision of finance and other types of credit such as hire purchase, finance leases, operating leases, and letters of credit may be captured.
2. The provision of 'financial advice' is excluded (see Item 10 of Schedule 2) but this term is not defined. Should this be a reference to 'financial product advice' as defined in the *Corporations Act 2001*?
3. How is it proposed to regulate non-resident lenders? There is a risk that the initiative could drive businesses offshore.
4. The power for APRA to be able to make a determination that a particular corporation or class of corporations are registrable corporations appears to us to be too wide. This power as currently drafted is unlimited, and as such is inappropriate.
5. Is the initiative intended to apply just to residential mortgage finance or all credit? As noted above, we consider it should be limited to *National Credit Code* regulated credit so as to limit its scope and not have the potential to interfere with business lending.
6. The government is keen to encourage Fintechs. This proposed initiative could work against that support.
7. The ACCC review on competition is collecting credit data. It may be appropriate to wait until that data is received and then consider whether or not there is an issue that needs to be addressed or a need for further market intervention is identified.
8. Is it proposed that entities that are currently registered under the FSCODA Act but do not meet the new requirements should de-register?
9. Given that the States have delegated power to the Commonwealth to regulate credit, is it appropriate for additional regulation to be imposed without appropriate delegation?

The Mortgage & Finance Association of Australia (MFAA) again thanks Treasury for the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Felton', with a large, stylized flourish at the end.

Mike Felton
CEO

SCHEDULE – CURRENT INITIATIVES IMPACTING THE CREDIT MARKET

1. Small Business Loans Inquiry (Carnell Report)
2. ASIC flex commissions proposal
3. Report of the Independent Review of the Code of Banking Practice (Khoury Report)
4. ASIC Enforcement Review: Breach reporting
5. Privacy Amendment (Notifiable Data Breaches) Bill
6. ASIC review of mortgage broker remuneration
7. Review of the Financial System External Dispute Resolution and Complaints Framework (Ramsay Report)
8. Amendments to the AML/CTF Rules
9. Preventing predatory credit card practices
10. SACCs (small amount credit contracts) 11. AFS and ACL Licensing - Treasury Taskforce Positions and Consultation Paper 3
12. ASIC'S Search Warrant Powers - Treasury Taskforce Positions and Consultation Paper 2
13. Industry Codes – Treasury Taskforce Positions and Consultation Paper 4
14. Banking Executive Accountability Regime
15. Empowering consumers through open banking
16. Productivity Commission - 'Competition in the Australian Financial System' review
17. Senate Economics References Committee - 'Consumer protection in the banking, insurance and financial sector' inquiry