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

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## **MFAA submission on the Treasury Task Force Consultation Paper: Strengthening ASIC's Licensing Powers**

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 in Australia.

### **Overview**

The MFAA generally supports the strengthening of ASIC's licensing powers as contemplated in the consultation paper on the clear understanding that controllers are not required to have any detailed knowledge or experience in relation to services or regulations relating to the relevant licence. This proviso is to ensure that controllers may simply be investors in a licensee or a licensee's parent. The requirement should be limited to assessing whether a controller is of good fame and character and is fit and proper to be controller of a licensee.

### **Responses to questions posed in the Consultation Paper**

- 1. Should ASIC be able to refuse a licence application if it is not satisfied that applicant's controllers are fit and proper to control a licensee?**  
  
Yes, subject to the proviso specified above.
- 2. What would be the impact of this position on licence applicants?**  
  
Negligible – but it is a sound preventative measure.
- 3. When notifying ASIC of a change of control should licensees be required to provide ASIC with sufficient information to enable ASIC to assess whether:**

- (a) the proposed new controllers are fit and proper to control a licensee? and/or**
- (b) the licensee remains competent to provide the financial services covered by the licence and able to comply with its obligations under the new controller?**

Yes.

- 4. Should ASIC be able to take action to suspend or cancel an AFS or credit licence (after offering a private hearing) if it is no longer satisfied that the controllers of the licensee are fit and proper to control the licensee?**

Yes, subject to appropriate rights of appeal. In addition, licensees should be given a period of not less than 60 days to rectify the situation prior to suspension or cancellation (except in circumstances where ASIC is satisfied that delay could cause material breach or damage).

- 5. Should a change of control require pre-approval by ASIC?**

No. This would unnecessarily delay and interfere with business transactions including business sales. However, the change of control should be promptly notified after any change of control occurs so that ASIC can conduct a review.

In addition, there should be a facility for pre-approval so that buyers (if they wished) could receive an assurance that they will be acceptable to ASIC prior to completion of any change.

- 6. Would it be appropriate for the requirement to notify ASIC of licensee changes in control to be a statutory obligation rather than a statutory licence condition?**

No comment.

- 7. Would it be appropriate for the obligation to require notification within 10 business days of the change of control taking effect?**

Yes.

- 8. Would it be appropriate to introduce penalties for failure to notify ASIC of a change in licensee control?**

Yes.

- 9. If so, what penalties should apply? Should the penalty be criminal, civil penalty or both?**

No comment.

- 10. Should the assessment requirements for AFS and credit licence applications be uniform? Or are there factors relevant to each sector that justify differences?**

Yes, the requirement should be uniform.

- 11. If so, should the Corporations Act be amended to reflect the provisions of the Credit Act with respect to licence applications? In particular should:**

- (a) **directors, secretaries and senior managers, rather than only responsible officers be assessed for AFS licence applications?**
- (b) **individuals be assessed against a 'fit and proper' rather than a test of 'good fame or character' for AFS licence applications?**
- (c) **the requirement to consider whether an AFS licence applicant's ability to provide financial services would nevertheless not be significantly impaired after forming a reasonable belief that individuals are not of good fame and character (or fit and proper) be removed?**

Yes.

- 12. Should ASIC be able to require an audit report from AFS licence applicants?**

No comment.

- 13. What will be the impact on AFS licence applicants?**

No comment.

- 14. Should ASIC be able to immediately suspend or cancel an AFS or credit licence if the licensee fails to commence engaging in a financial services or credit business within six months of being granted a licence?**

There is sometimes a significant delay between obtaining a licence and commencing business. Even well organised licensees may need time to make sure their systems, funding arrangements, and other business requirements are in place and fit for purpose. We therefore suggest a period of not less than 12 months should expire before ASIC can take action against credit licensees.

There should be time for applicants to commence business. ASIC should be required to give not less than 60 days notice before taking this action. The process should be that the licence is suspended for six months after expiration of the 60 day notice before cancellation unless the licensee can satisfactorily show why the licence should not be suspended or cancelled, to provide an opportunity for 'revival'.

It is also important that ASIC is properly resourced to undertake this process. Currently even simple licence variations and applications are taking an inordinately long time – often more than six months.

- 15. If so, should licensees be given an opportunity to seek an extension of time?**

Yes.

- 16. Is six months an appropriate initial time frame?**

No, see our answer to 14.

- 17. Should the consequences for making false or misleading statements in documents provided to ASIC in the AFS and credit contexts be aligned?**

Yes.

- 18. Should the same penalties, including a combination of criminal and civil penalties, apply?**

No comment.

- 19. Should ASIC be able to refuse to grant an AFS or credit licence if the application or documents accompanying the licence application are false or materially misleading?**

Yes, so long as ASIC first provides the applicant with an opportunity to explain the apparent false or materially misleading information.

- 20. Should applicants seeking an AFS or credit licence or to vary an existing licence have an express obligation to confirm, before the licence is granted, that there have been no material changes in the applicant's circumstances that would render statements or information in the application false or materially misleading?**

Yes.

- 21. Alternatively, should applicants be required to notify ASIC of material changes in the applicant's circumstances on an ongoing basis between the time of lodging an application for a licence or licence variation and ASIC making a decision with respect to the application?**

Yes, this is a reasonable requirement.

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 'Mike Felton', written in a cursive style.

Mike Felton  
Chief Executive Officer