ASIC Funding

Submission on the ASIC Supervisory Cost Recovery Levy

by the
Mortgage & Finance Association of Australia (MFAA)

In response to:

ASIC Supervisory Cost Recovery Levy Regulations 2017

26 May 2017

MORTGAGE & FINANCE ASSOCIATION OF AUSTRALIA

GPO Box 144
Sydney NSW 2001
1300 554 817
enquiries@mfaa.com.au

The Treasury
Langton Crescent
PARKES ACT 2600

By email to: ASICfunding@treasury.gov.au

Treasury Consultation on the ASIC Supervisory Cost Recovery Levy Regulations 2017

On behalf of the Mortgage & Finance Association of Australia (MFAA), we thank the Treasury for the opportunity to respond to the draft Regulations proposed in support of a funding model to recover regulatory costs for the Australian Securities & Investments Commission (ASIC).

Established in 1982, the MFAA is focused on the representation and maintenance of professional standards for mortgage and finance brokers and other intermediaries, including mortgage management businesses and non-bank lenders.

Its membership profile also includes ADI and non-ADI lending institutions that distribute their products via intermediaries and businesses that provide support services to the mortgage and finance sector. The MFAA's current membership is in excess of 12,900 individual and business members.

Overview

The MFAA commends both the Federal Government and ASIC for its consultative approach in the development of this funding model. This approach, particularly the extensive industry engagement, has led to an outcome which achieves the objectives of the initiative whilst minimising the impact on industry.

One of the MFAA's primary objectives in its initial and subsequent response to the funding proposal was to ensure that the funding model was simple. Although the funding mechanisms vary across the relevant industry sectors, and despite the complex nature of commercial arrangements within the sector, the draft Regulations in respect of the credit intermediary sector aligns with this objective and the other objectives outlined in the MFAA's submission of 10 March 2017.

This submission responds to a small number of matters raised by the draft Regulations in relation to the levy on credit intermediaries.

Credit Intermediary levy

We believe that the graduated levy based on the number of appointed credit representatives of a Credit Licensee is an appropriate outcome. We consider that these are the entities listed as either corporate or natural person credit representatives on ASIC's online 'Professional Register' as such.

This does, however, trigger some unintended outcomes which may lead to some individual credit representatives being charged multiple times. The draft Regulations make it clear that a relevant appointed company, as well as the individual appointed credit intermediary, is to be charged a levy.

Many credit intermediaries recorded in ASIC's Register, operate through a corporate structure. The MFAA is concerned that as the fee is levied on all appointed credit intermediaries, both corporate and individual, this may lead to a fee being levied on what is often a single small business owner twice – once for the credit intermediary and once for their corporate structure.

Current regulatory requirements are that a credit licensee who appoints a corporation to act under its licence must also appoint any natural person who acts under that appointed corporation – and therefore under the relevant licence. This means that the appointed corporation is paying a levy when in fact it provides no credit assistance itself.

The MFAA considers that this is an unfair consequence and that the credit intermediary levy should only be paid by a natural person who acts to provide credit assistance. We believe that it is likely that more than 10,000 appointed credit intermediaries operate through a company.

Transitional arrangements

Some concern remains about the arrangements for transitioning from the current Credit Licence fee (paid via the licensee's Annual Compliance Certificate) to the new levy which comes into effect on 1st July 2017.

We believe that all licence holders should be rebated on a pro-rata basis for the component of their licence fee that relates to activities after the levy implementation date because the current fee regime will for some, for example, begin on 1st July 2018 even though they may have paid their compliance certificate fee in the preceding month.

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

Yours sincerely

Mike Felton
CEO

Cynthia Grisbrook
Chairman