ASIC CONSULTATION PAPER 216

Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs

---

COMMENTS BY THE MORTGAGE AND FINANCE ASSOCIATION OF AUSTRALIA (MFAA)

October 2013

Mortgage and Finance Association of Australia (MFAA)

MFAA is the peak professional association in Australia for credit advisers, comprising over 10,000 mortgage and finance brokers, mortgage managers and aggregators and broking groups.

The Context of these Comments

MFAA's members are, by and large, either Australian Credit Licence holders or their credit representatives under the *National Consumer Credit Protection Act 2009 (NCCP)* and consequently are not directly impacted by CP 216. Our comments therefore, while they do not directly respond to the questions posed in CP 216, we believe, do raise important issues that need to be recognised and responded to by the general SMSF community and the Government. These relate to the efficiency and reputation of SMSFs and the protection of investors.

Flexibility and complexity create potential for 'gaps'

The flexibility provided by SMSFs to individual investors to have a direct impact in determining their superannuation destinies, while welcomed, has created the need for a robust regulatory framework to ensure maximum protection from misadventure is afforded to investors in SMSFs.

The regulatory framework covers a number of different professions involved in advising SMSFs, including lawyers and financial advisers/planners and accountants under the Financial Services Reform Act and where borrowing is involved, lenders and mortgage brokers/credit advisers under the National Credit Consumer Protection Act.

Where different professions are involved in the one SMSF process, clearly there is a potential for gaps to appear and for the risk of misdirected or ill-informed advice. This risk is considerably mitigated by the regulatory framework and also by the work of organisations such as SPAA in providing a common focal point for SMSF professionals.

The potential for risk however is heightened when SMSFs become involved in property and low-recourse-borrowing-arrangements (LRBA) in particular, where property is involved.

MFAA has recognised this risk potential and, with the knowledge of ASIC, has established a special accreditation program for MFAA members involved in advising on and recommending appropriate credit to SMSF trustees who have received advice from legal and financial services advisers about the suitability of a property investment. This accreditation program *MFAA Credit Adviser – SMSF lending* emphasises the role, and in particular, the limitations of credit advisers (brokers) in the SMSF process, as well as ensuring members clearly understand both the role of other professionals in the process and the need to collaborate with them on behalf of the SMSF client. Australian lenders that provide SMSF property financing have given support for this MFAA program.

Because SMSFs investing in property and borrowing to invest in property has in recent times become very popular, MFAA's program stresses the importance of ensuring that no gaps or cracks can appear between the roles and services provided by the various professionals involved.

Nevertheless it is clear such a popular trend has attracted opportunists who see SMSFs and property as fertile ground for rapid growth. Daily media advertisements and promotions are testament to this. It is apparent that these opportunists (eg 'property spruikers') are not regulated and their business model seems to take advantage of that.

As indicated above, while there is the potential for gaps to appear under ‘normal’ processes of establishing and running an SMSF, this potential is magnified significantly in the above circumstances, notwithstanding the goodwill of the various professional groups involved.

A Suggested Approach to avoid the ‘train wreck’

Even with the best of intentions and apparently robust regulation in place the recent history of the financial services sector has demonstrated that ‘train wrecks’ still have found a way to occur.

We believe, given the environment outlined in this short submission, there are plenty of flashing warning lights that the train is on the way. What can be done to stop it?

We suggest that a good start would be ASIC facilitating collaborative discussions with all the professional bodies involved in SMSFs and the respective EDR schemes with the objective of identifying the likely destination of the ‘train’, and the location of the ‘wreck’ and putting in place either regulatory measures or collaborative processes between the various professional groups to either prevent the ‘wreck’ or at least mitigate the damage.

This procedure could also produce helpful outcomes for consumers such as educational materials and some guidelines for the various professional bodies to provide to members where there are multiple professions and potential cross-over responsibilities involved in the establishment and ongoing running of an SMSF.
