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**BY EMAIL**

Fleur Grey  
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Financial Services  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
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*By email: [responsible.lending@asic.gov.au](mailto:responsible.lending@asic.gov.au)*

Dear Ms Grey

**Consultation Paper 309 – RateSetter submission**

*RateSetter background*

RateSetter Australia RE Limited (**RateSetter**) is a leading Australian peer-to-peer lending operator. RateSetter holds Australian financial service licence (**AFSL**) number 449176 and Australian credit licence (**ACL**) number 449176 and is the responsible entity of the RateSetter Lending Platform (ARSN 169 500 449) and trustee of the RateSetter Wholesale Lending Platform.

Since our launch in 2014, RateSetter has facilitated over \$500 million in consumer loans across unsecured and secured personal loans, secured automotive loans and loans for the purchase of clean energy equipment such as solar panels and batteries.

RateSetter is pleased to make a submission on certain proposed changes to Regulatory Guide 209 as set out in Consultation Paper 309 (**CP309**). If of assistance, RateSetter would be pleased to meet with ASIC as part of its consultation process to discuss its views in relation to the below submissions.

Heading and paragraph references in this document relate to CP309 unless indicated.

*1. Proposal B1: Reasonable inquiries and verification steps*

RateSetter is supportive of ASIC's proposal to clarify licensees' responsible lending obligations in a revised regulatory guide. We consider that the current regulatory guide does not provide sufficient certainty on how lenders should meet responsible lending obligations under the National Consumer Credit Protection Act (**NCCPA**), and as a result, RateSetter has observed highly varied interpretations of the obligations amongst lenders. A lack of concrete guidance has consequently led to an un-even playing field, in which some lenders are prepared to take a more 'aggressive' approach in meeting their responsible lending obligations under the NCCPA in order to be able to gain a competitive advantage over other lenders.

However, we consider that proposal B1 to set 'generally reasonable' inquiry and verification steps (especially when taken together with proposal C2) may in effect set inappropriate mandatory minimum inquiry and verification steps that apply to all types of loans, regardless of the circumstances of the consumer or loan product being applied for, and that this would have negative consequences. Accordingly, we believe it is important that any such minimum requirements should be set carefully and be appropriate for all types of consumers and credit products, and not just with reference to, for example, mortgage lending.

RateSetter considers that if ASIC establishes excessive, blanket requirements for all loans, harmful consequences which may include:

- Significant increases in costs to lenders to obtain, process and evaluate borrower application information. These costs would inevitably be passed on to consumers in the form of higher rates and fees. For example, currently we estimate that over 50% of the variable costs incurred by

RateSetter in facilitating a consumer loan relate to meeting responsible lending requirements. If obligations were to increase, these costs would rise, and this would correspondingly increase the cost of credit to consumers.

- A further un-levelling of the playing field in which entities that have large amount of existing customer data (being large, incumbent financial organisations such as major banks) are placed at a significant advantage to smaller, growing organisations such as RateSetter. This may have the effect of decreasing competition in lending markets, reducing choice and increasing costs for consumers.
- A strong incentive for consumers and intermediaries (including brokers and point-of-sale merchants) to prefer finance that is not regulated by the NCCPA to avoid the costs and customer inconvenience of complying with responsible lending requirements. For example, brokers may encourage consumers to utilise novated leasing over ordinary car loans, and point-of-sale merchants may prefer so called 'interest-free' loans which are exempt from the NCCPA. This has the effect of reducing the number of finance products that are covered by the NCCPA, potentially harming consumers.
- Consumers suffering from unnecessary inconvenience, given the additional burdens of satisfying increased inquiry and verification requirements.

More specifically, we consider that inquiry and verification steps for personal and automotive loans should be reduced relative to mortgages. This view is supported by:

- Personal and automotive loans typically being for lower amounts, over shorter periods of time, meaning the consumer is less likely to suffer substantial hardship in meeting their repayments under such a credit contract.
- Low arrears and default rates across the mainstream consumer and automotive finance industry over the last 20 years.
- RateSetter's own experience that there is an extremely low incidence of consumers who enter into consumer and automotive loans and who subsequently suffer substantial hardship in meeting their repayments under a credit contract.

Additionally, even within the category of consumer any automotive loans, we believe different inquiry and verification steps are appropriate depending on several factors. We believe that inquiry and verification steps should be able to be scaled down in circumstances such as where:

- It is able to be ascertained that the consumer has a low risk of financial vulnerability (for example, those consumers that exhibit a high degree of financial literacy, have a higher income and a demonstrated capacity to meet existing financial obligations through credit reporting information or otherwise).
- A loan is to replace another loan with a higher interest rate or total cost, and where that consumer has demonstrated that they are able to meet without financial hardship.
- Where an application is in relation to the financing a product or service which improves the consumer's monthly cash flows. For example, if a consumer is seeking to purchase solar panels, and the repayment amount of their loan would be less than the amount of energy bill savings that consumer would achieve each month.

## *2. Proposal C2: Verification of a consumer's financial situation*

While advances in technology and automation have made it easier for consumers to provide lenders with relevant information for inquiry and verification purposes, what is considered by ASIC to be 'reasonably available' information should be assessed in light of the particular type of consumer and credit product and not prescribed for all loans and consumer types.

For example, while much of the information set out in Annexure 1 may be 'reasonably available' in the context of a mortgage application, it is RateSetter's experience that consumers are reluctant to provide the same level of information to assist with verification in relation to smaller amount consumer loans (such as personal and automotive loans). This can be for a variety of reasons, including a consumer's concerns about protection of personal information held by a lender, the consumer's own view of the relevance of the information to a lender's credit decisions, and the involvement of a third-party or

intermediary such as a point-of-sales finance referrer or broker. These concerns are exacerbated when the lender is a lesser-known brand, such as RateSetter when compared to a major bank.

Given this, not all of the verification sources set out in Appendix 1 should be considered 'reasonably available' for all types of consumers and for all types of credit products. For example, RateSetter notes that based on its existing data, fewer than 50% of applicants will provide bank account information (either via data aggregation services or otherwise) without a significant financial incentive as part of completing an online application process. RateSetter is required to commit a significant amount of resources, both in the form of technology and customer service resources to collecting verification documents including identity documents, payslips and bank statement data from consumers.

### *3. Proposal C3: Use of benchmarks*

RateSetter does not consider that the proposed amendments as set out in paragraph C3 make sufficiently clear when and how benchmarks may be used by a lender in verifying a loan applicant's expenses.

RateSetter considers that recent judicial commentary and comments by the Royal Commission create significant doubt as to when and how benchmarks can be used by lenders. To avoid further confusion and create consistency between lenders, ASIC should provide clear guidance on how benchmark data can be used, and specifically when the use of a benchmark, in conjunction with customer provided information will be considered 'verification'.

RateSetter agrees with ASIC that if used, benchmarks should be reasonable and realistic and should be adjusted to reflect the income or geographical location of the consumer. RateSetter also agrees that lenders should be required to demonstrate whether a benchmark is reasonable to use if a significant portion of its customers have expenses (as verified from bank statement data or similar) materially in excess of the benchmark values.

### *4. Proposal C4: Consumers' requirements and objectives*

In clarifying requirements relating to a licensee's obligation to understand a consumer's requirements and objectives, ASIC should ensure these obligations are scaled to reflect, amongst other things, the complexity of the proposed credit product and the channel through which the finance is obtained by the consumer. Under the current proposals set out in proposal C4, obligations relating to consumer and automotive loans appear to be the same as for more complex financial products, such as a mortgage or investment loan. This may result in significant increases in costs and complexity for consumers, without providing any additional protection that a consumer is entering into a loan that meets their requirements and objectives.

Specifically, ASIC's proposal in paragraph 67 to require lenders to "have a further discussion with a consumer to explain [any discrepancies between the consumer's requirements and the offered products] and determine whether the consumer would consider the credit contract [...] to be unsuitable" (especially when combined with increased expectations around 'fact find' record keeping as set out in paragraph 85) are overly onerous for simple products such as personal and automotive loans.

RateSetter offers simple products and provides a significant amount of information about a proposed credit contract to consumers in its simple, easy to understand online environment. Consumers are well placed to be able to understand the relevant features of such a credit contract and make a determination for themselves as to whether or not it meets their requirements. If consumers are not satisfied with the information provided by RateSetter, they are able to easily make contact with a customer support consultant to request further information.

To require a lender to pre-emptively confirm with a customer that they have considered all aspects of and made the appropriate decision in relation to a product is overly paternalistic and risks inverting the relevant legislative test from one of being "not unsuitable" to attempting to determine that a product is "suitable" for a customer. It is also likely to increase costs for consumers and reduce the effect of competition that companies like RateSetter are able to provide.

### *5. Proposal D5: Content of a written assessment*

Related to the concerns raised in section 4 above, RateSetter considers that the example written assessment set out in Appendix 2 should be scaled to reflect, amongst other things, the complexity of the credit product, and the channel through which the finance is obtained by the consumer.

Appendix 2 as drafted contemplates a complex credit product in which a lender engages in an ongoing 'discussion' with a consumer about the proposed credit product. This contrasts with consumer and automotive lenders such as RateSetter which offer consumers a simple, online application process, with more limited directly interaction with the consumer.

Online lenders provide significant benefits to consumers, including increased convenience and speed and generally, lower costs. Online application processes provide for the same (if not greater) opportunity for consumers to obtain and consider information about a credit product at their own pace, and to seek further information from a lender if they have concerns or queries regarding whether or not, for example, the product meets their requirements and objectives.

Specifically the obligations in Appendix 2 to "outline types of expenses considered by the consumer to be non-discretionary" and to "outline the types of expenses a consumer has identified that they would be willing and able to reduce to afford the credit contract" require a detailed conversation with consumers regarding the lenders own analysis of the information provided by the consumer (including detailed bank statement information) and the consumers own lifestyle. In the context of online consumer and automotive loans, many consumers would find this activity to be inconvenient and invasive of their privacy and would not participate in this kind of interview or assessment. This would have significant effects on lenders, decrease completion between newer online and existing bricks-and-mortar lenders and result in increased costs for consumers.

RateSetter also notes that providing such detailed analysis of its own assessment of treatment of income and expenses could result in significant fraud risk as it may provide fraudsters with an opportunity to probe a lenders specific income assessment and lending policies through such an interview.

*Final remarks*

As noted above, if desired, RateSetter would be pleased to meet with ASIC to provide further information in relation to our perspectives on this consultation paper. Please do not hesitate to contact me on 0481085312 or if you would like to meet or discuss our submission in further detail.

Yours truly

A handwritten signature in black ink, appearing to read "B. Milsom".

Ben Milsom  
Director  
RateSetter Australia RE Limited