4 September 2023

Senior Manager, Credit & Banking
Enforcement Inquiries & Compliance
Australian Securities and Investments Commission
120 Collins Street
Melbourne VIC 3000

By email: product.regulation@asic.gov.au

Dear Manager

Consultation Paper 371 – Short term credit facilities and continuing credit contracts

Submission supporting proposals to extend product intervention orders

1. Overview

Consultation Paper 371 sets out ASIC's proposals to extend the current product intervention orders relating to short term credit facilities and continuing credit contracts so that they remain in force until they are revoked or sunset. AFCA[1] welcomes the opportunity to provide feedback on the proposals.

AFCA fully supports the extensions proposed in Consultation Paper 371. In particular we agree that both product intervention orders should be extended so that they remain in force until they are revoked or they sunset on 1 October 2032, and that this timeframe is necessary to ensure both good consumer outcomes and market certainty.

[1] For comprehensive information about AFCA, see our website www.afca.org.au.

To explain our reasons for supporting the extensions, we:

- refer to our previous submissions supporting the imposition of the product intervention orders
- highlight key points.

2. Previous submissions

AFCA made submissions in 2019 and 2020 that discussed issues relevant in the present consultation:

- a submission in August 2019 relating to short term credit facilities, responding to Consultation Paper 316
- a submission in August 2020 relating to continuing credit contracts, responding to Consultation Paper 330.

3. Key points

Significant consumer detriment

AFCA believes the lending models prohibited by the current product intervention orders resulted in significant consumer detriment while they were operating. We reached this view taking into account the features of the models, which are noted below.

- The models were targeted to vulnerable consumers, generally experiencing financial stress.
- The models incentivised consumers to choose a high-cost ‘fast-track’ option as the standard direct application process does not supply the funds quickly.
- The products had significantly higher up-front costs than regulated products.
- The fees were extremely high and default fees were uncapped.
- The models required payments by direct debit. If accounts had insufficient funds, overdrawn fees were incurred, further adversely impacting the financial situation of consumers.

Wide impact of lending models

We note ASIC’s observation in Consultation Paper 371 that the effect of the current orders was that the relevant entities had ceased offering the targeted short term credit facilities and continuing credit contracts, but that there is a risk that these entities may resume or start issuing these facilities in the future if the orders are not extended.

If allowed to operate, the prohibited lending models could have significant adverse effects on individuals, their families and communities, as well as confidence in the broader financial services system. Our previous submissions focussed on explaining how vulnerable consumers could be affected.[2]

Access to dispute resolution

Holders of Australian Credit Licences are required to:

- have internal dispute resolution (IDR) processes meeting the standards specified in ASIC's Regulatory Guide 271, to ensure consumers can access fair, timely and effective IDR
- maintain membership of AFCA, to ensure complainants can, without making any payment, access our external dispute resolution (EDR) services[3]

If the current product intervention orders are not extended, the lending models now prohibited could resume and they would not be regulated under the credit legislation. The comprehensive consumer protection framework provided by that legislation[4] would not operate, including that affected consumers would not have access to IDR and to AFCA. This would be a particular concern given that, as ASIC's work demonstrates, short term lending and continuing credit contract models have in the recent past targeted and attracted vulnerable consumers resulting in significant financial detriment.

Where a consumer has access to AFCA, additional consumer protections also apply. Examples, discussed on pages 6 to 8 of our submission in August 2020, are that:

- AFCA's Rules[5] restrict legal proceedings and other action by a financial firm to recover a debt while we consider a complaint relating to the debt.

  AFCA can often resolve all of the issues in a credit matter by negotiation. A resolution could make legal proceedings unnecessary or bring an end to proceedings already begun.

- AFCA identifies and addresses systemic issues, using the complaint data we record.

  As we consider the range of complaints within our jurisdiction, we use complaint data to identify any systemic issues. These issues are resolved and reported to ASIC and other regulators.

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[2] See our submission in August 2019 – especially pages 3, 5 and 6.
[3] AFCA is required to meet standards set by the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* and ASIC's Regulatory Guide 267.
[4] Our submission in August 2019 provided more detail on consumer protection provisions in legislation, on pages 4 and 5.
[5] See AFCA's Rules, Rule A.7.

These forms of consumer protection are not available in relation to unlicensed credit.

Support for proposed extensions

AFCA supports the extensions now proposed to both product intervention orders based on:

- ASIC's evidence that the orders have had the intended effect in ceasing the supply of the relevant products
- evidence provided by consumer groups about the significant detriment that was caused in the past by these prohibited lending models.

We believe the proposed extensions are an efficient and effective regulatory response, and that if the orders are not extended, harmful credit products could be marketed with the continuing effect that consumers with complaints relating to the products would not have access to adequate IDR and EDR.

4. Further input or discussions

Please do not hesitate to contact us if ASIC would like further input for this consultation or to discuss any of the matters addressed above.

Our contact for this matter is [redacted], Senior Policy Advisor, at [redacted] or on [redacted].

Yours faithfully

[redacted]

Natalie Cameron
Lead Ombudsman – Banking & Finance
Australian Financial Complaints Authority