

29 January 2021

██████████  
Lawyer  
Financial Advisers Team  
Australian Securities and Investments Commission

By email to: [referencechecking@asic.gov.au](mailto:referencechecking@asic.gov.au)

Dear ██████████,

### **SUBMISSION RE CP333 – REFERENCE CHECKING**

Thank you for the opportunity to provide feedback on this Consultation Paper.

Astute Financial Management Pty Ltd is an Australian Credit Licence ('ACL') holder as well as being an 'Aggregator' within the mortgage broker industry.

We believe the proposed operation of the reference obligations and protections are not comprehensive enough when applied to ACL holders who are typically within an Aggregator network and will not fully assist in 'removing the bad apples' from our industry.

#### **ACL v AFSL regimes**

The ACL regime is different to the Australian Financial Services Licence ('AFSL') regime.

- **AFSL**

Under the AFSL regime there is no concept of a sub-licensee (ie there is one AFSL with representatives, the AFSL does not contract sub-AFSL's who have their own representatives). The AFSL holder is commonly known as the 'dealer group', which is akin to the services that an Aggregator typically provides (eg holds the Provider agreements, compliance services, audits, training, systems, templates, revenue management, marketing services etc).

In the AFSL regime the dealer group is the one and only AFSL holder responsible for their representatives. So, when a financial planner moves from one AFSL holder to another then this is effectively moving from one dealer group to another dealer group. The AFSL holder/Dealer Group has all the information (ie compliance, training records, systems, consequence management, reporting to ASIC, feedback from Providers). This enables the proposed Reference Checking system to work well with regards to obligations and protections from outgoing AFSL to incoming AFSL.

- **ACL**

In the ACL regime there is the concept of sub-licencee. Typically the Aggregator is an ACL holder and they might have direct representatives under their licence but they will also have contracts with businesses that have their own ACL (ie sub-ACLs). These sub-ACL holders use aggregators because they are too small to have direct agreements with lenders and they typically do not have the financial or human resources to run compliance departments, develop software, have qualified trainers, produce marketing etc.

These sub-ACLs may in turn have contracts with businesses or individuals that are also ACL holders (effectively sub-sub-ACLs). It would not be uncommon for an individual business ACL holder to find themselves 2 to 3 layers deep within an Aggregator network.

The proposed Reference Checking obligations and protections only apply from the direct outgoing ACL holder to the direct incoming ACL holder.

Where an ACL holder (ie a sub-ACL etc) is within an Aggregator network then the Aggregator is outside the Reference Checking process. The Aggregator is likely to have the most detailed information about lender queries or investigations, audit records, cancelled or suspended accreditations, training records, use of systems etc. But the Aggregators – both outgoing and incoming aggregators - could not provide or receive any reference checking information. This could mean brokers could freely move from one Aggregator to another and be accredited or re-accredited with lenders without the aggregator being privy about reference information. This will not facilitate the ‘removing of bad apples’ from the system.

- **Example of Aggregator / sub-ACL structure**

In the attachment to this letter we have set out a typical Aggregator business structure where contracted (or sub-contracted) businesses have their own ACL.

### **Broadening of Reference Checking protocols**

We request that ASIC and or Treasury reconsider the effectiveness of the Reference Checking obligations and protections in relation to ACL holders.

Many of the difficulties we see with the proposed arrangements for ACL holders could be overcome by including the Aggregator (both incoming and outgoing and former outgoing) within the reference checking obligations and protections. This would facilitate the flow of factual information between the relevant parties and protect the integrity of the credit industry and ultimately protect consumers.

Should you require any additional information then please contact me on [REDACTED] or at [REDACTED]

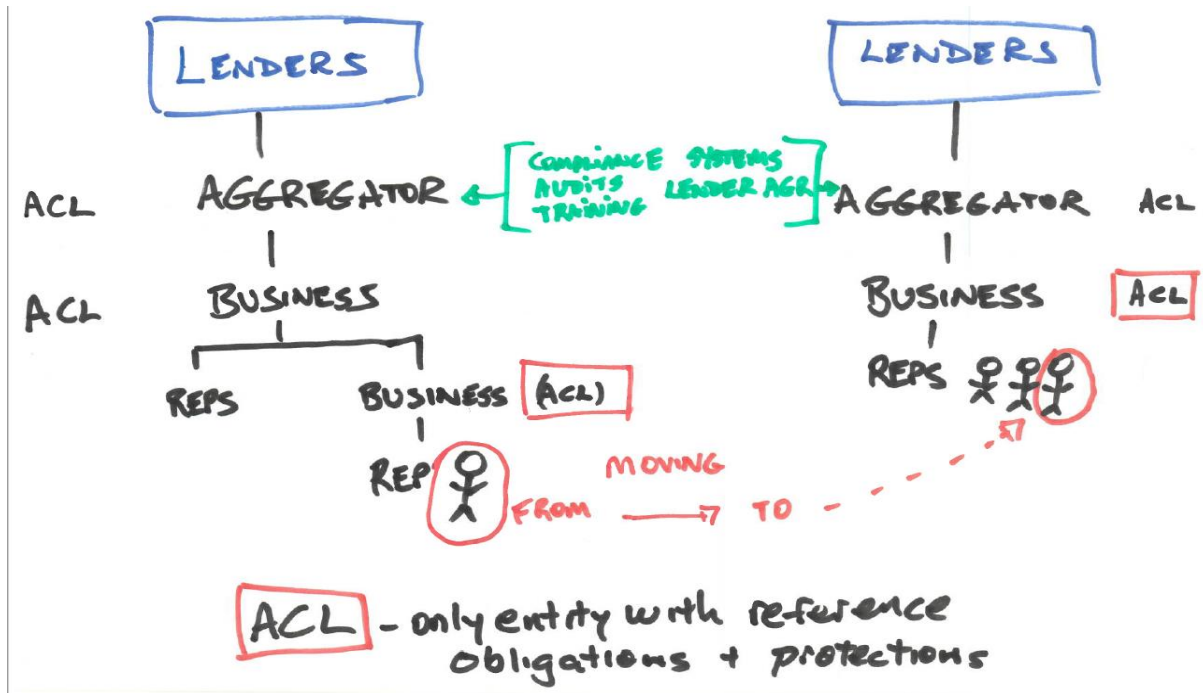
[REDACTED]

Peter Sullivan – General Manager

(signature electronically added by  
Peter Sullivan, 29/01/2021 at 11:49am.)

## ATTACHMENT

### Example of ACL regime and limitation of Reference protocols



The above example explains the unique sub-ACL arrangements that typically occur within the ACL regime. The Aggregators in this example are outside the Reference Checking regime obligations and protections.

The “From” Aggregator would be in the best position to provide additional factual information about the broker that is moving. This would give the “To” Aggregator the opportunity to act as a gatekeeper for the industry and to protect lenders and consumers from ‘bad apples’.

Under current drafting of the Reference Checking protocols there is no obligation or protection for the outgoing or incoming Aggregators to give or receive any Reference information. The outgoing Aggregator has no protections to provide relevant factual information. The incoming Aggregator cannot ask the sub-ACL for a copy of the Reference information as would breach privacy and not offer protections. The incoming Aggregator cannot request information directly for the outgoing (or former outgoing) Aggregator that meets the standards and protections of the proposed protocols.