PUBLIC CONSULTATION DRAFT SEPTEMBER 2024

AFIA Finance Industry Code Compliance Committee Terms of Reference

Australian
Finance
Industry
Association

1. Introduction

Establishment

1.1 The AFIA Finance Industry Code of Practice Code Compliance Committee (**CCC**) is an independent committee established by the AFIA Board under the provisions of the Constitution.

Review

1.2 These Terms of Reference will be subject to review and amendment by the Board at any time.

2. Purpose and Authority

Purpose

2.1 The purpose of the CCC is to monitor, investigate and enforce compliance with the AFIA Finance Industry Code of Practice (the Code) by Code Members

Authority

2.2 The CCC is authorised to investigate any activities referred to in this Terms of Reference and, in carrying out its administrative, compliance and investigative roles, is authorised to take such actions as are within its powers and to make recommendations to the Board from time to time.

2.3 Subject to compliance with clause 10, the CCC will have access to relevant records to carry out its task and will have the right to seek such additional information and explanations as it considers appropriate in the circumstances (acting reasonably).

Guiding Principles

2.4 The CCC will:

- (a) act in a fair and effective manner with integrity and impartiality;
- (b) be transparent and accountable;
- (c) provide requested information for inclusion in AFIA's annual review and six-monthly report;
- (d) communicate clearly with stakeholders regarding its activities; and
- (e) promote the Code and its work.

Professional Advice

2.5 The CCC may obtain external legal, financial, industry or other independent professional advice or information reasonably required to carry out its activities at AFIA's expense, subject to consultation with the Chief Executive Officer.

3. Composition of CCC

Number and Structure

3.1 The CCC will consist of at least three (3) members (each a CCC Member) appointed by the Board. Each CCC Member must be an independent person with relevant experience at a senior level in finance, regulation, retail or the community in Australia.

3.2 The Chief Executive Officer and the Chairperson of the Board will jointly select one (1) of the CCC Members appointed in accordance with clause 3.1 to be the independent chairperson of the CCC (CCC Chair).

3.3 In clause 3.1, 'independent' means a person who is not currently, and has not within the previous 12 months, been:

(a) a member of the Board; or
(b) an employee or officer of a Code Member; or
(c) in a material business relationship with any entities that are Code Members; or
(d) a substantial security holder (5% or more) of an entity that is a Code Member; or
(e) an employee of an entity or an organisation advocating or campaigning on behalf of finance-related consumer matters in Australia; or
(f) in a close personal relationship with any person who falls within any of the categories described in paragraphs (a) to (e) above.

Term

3.4 Each CCC Member (including the CCC Chair) will hold office for a three year term. A person who was, or is currently, a CCC Member is eligible for re-appointment to the CCC up to two times.

Roles

3.5 The CCC Chair will do all things necessary to ensure the duties and responsibilities of the CCC are effectively discharged.

4. CCC members - Termination and Resignation

Resignation

4.1 A CCC Member may resign from the office during his/her term by giving the Board at least one months' notice in writing.

Termination

4.2 The Board may terminate the appointment of a CCC Member by giving the CCC Member seven days' notice in writing (with a copy of the notice of termination to the Chief Executive Officer) if the CCC Member breaches their obligations as set out in these Terms of Reference or the document appointing him/her. The notice must set out the reasons for the termination.

Vacation

4.3 The office of a CCC Member will be automatically vacated if he/she:

(a) becomes a member of the Board; or
(b) becomes an employee or an officer of a Code Member; or
(c) enters into a material business relationship with an entity that is a Code Member; or
(d) becomes a substantial security holder in an entity that is a Code Member; or
(e) becomes an employee of an entity or an organisation advocating or campaigning on behalf of finance-related consumer matters in Australia; or
(f) enters into in a close personal relationship with any person who falls within any of the categories described in paragraphs 3.3(a) to (e); or
(g) becomes a bankrupt under the Bankruptcy Act or makes an arrangement or composition with his/her creditors; or
(h) dies; or
(i) becomes of unsound mind.

5. Casual Vacancies and Alternate Members

Casual Vacancies

5.1 A person may be appointed by the Board to fill a casual vacancy for a CCC Member. A person appointed to fill a casual vacancy:

(a) must satisfy the independence and experience requirements of clause 3.13.1 as if the appointment was an ordinary appointment for that position; and

(b) will hold office until the term of the casual vacancy ceases or the period during which their predecessor CCC Member would have held office expires, whichever occurs first.

Alternate CCC Members

5.2 A CCC Member may nominate an alternate to attend a meeting of the CCC which the CCC Member is unable to attend due to illness, absence from Australia, the existence of a material personal interest or conflict or other significant circumstances, provided that the CCC Member has made reasonable enquiries to satisfy himself/herself that the person he/she proposes to nominate as an alternate does not have a material personal interest or conflict in relation to a matter that is to be considered at the relevant CCC meeting. The appointment may be a standing appointment.

5.3 A person appointed as an alternate must satisfy the independence and experience requirements of clause 3.1 as if the appointment was an ordinary appointment for that position.

5.4 A person appointed as an alternate may exercise all the powers of their appointer (other than the power to appoint an alternate) and is subject to all the requirements applying to the office of their appointer, at the meeting which they attend at which their appointer is not present.

6. Functions and Responsibilities

Functions

6.1 The CCC is responsible for the independent administration and enforcement of the Code and, in doing so, has the following functions and responsibilities:

(a) consider (and, when applicable, approve) applications by Members which are not Code Members to become Code Members;
(b) establish and maintain an up-to-date register of Code Members;
(c) to receive information and compliance reports from Code Members, to enable the CCC to monitor and report on each Code Member's adherence to the Code to standards determined by the CCC from time to time;
(d) to receive reports of alleged breaches of the Code;
(e) to investigate such reports that fall within its powers;
(f) to make determinations in relation to Alleged Breaches investigated by it;
(g) to take, or recommend to the Board, action to remedy a breach, Alleged Breach or potential breach of the Code, taking into account any measures related to any such breach that have been agreed with, or imposed on, a Code Member by any regulatory body;
(h) to oversee and monitor the implementation of any recommendation or any agreed measures imposed by it;

(i) to impose, at its sole discretion, Sanctions for a breach of the Code that is not corrected by the Code Member within the set timeframe; and

(j) to exercise such powers and perform such other acts as may be provided for from time to time in the By-Laws and / or Code and which fall within the functions and responsibilities of the CCC, or which are incidental to any of the above functions and responsibilities.

Administrative Functions

6.2 The CCC may delegate some of its secretarial and administrative functions and responsibilities to a third party (**Code Administrator**) appointed by the CCC. The CCC must not delegate its power to administer the Code or to impose a Sanction in relation to Code non-compliance.

Public Statements

6.3 The CCC will make the following information public:

(a) the contents of its semi-annual reports as outlined in clause 11.2;

(b) the contents of its annual report as outlined in clause 11;

(c) any Alleged Breach that the CCC decides should be reported to the Relevant Regulatory Bodies (as defined in Schedule 1 and amended from time to time); and

(d) any other matters as authorised by these Terms of Reference or otherwise authorised in writing by the Board.

Duties

6.4 In executing its duties and responsibilities, the CCC will:

(a) in a timely manner, keep the Board appraised of its activities and of any incidents which the CCC Chair reaonably believes the Board should be aware; and

(b) recommend to the Board any changes to procedures to improve the operation of the Code.

6.5 The CCC will perform other duties and activities that the Board considers appropriate in the context of these Terms of Reference.

7. Meetings

Frequency

7.1 The CCC will meet as frequently as is required to effectively carry out its role. The CCC Members will determine, from time to time, how they will discharge their responsibilities and will convene, adjourn or otherwise regulate meetings and proceedings of the CCC as they see fit. At a minimum, the CCC will meet at least four times in the 12 month period following commencement of the Code, and each financial year thereafter.

Convening

7.2 Any CCC Member may call a meeting of the CCC.

7.3 Except in the case of an urgent meeting, a notice of each meeting, confirming the date, time, venue and agenda, will be sent to each CCC Member at least 5 Business Days prior to the date of the meeting. The notice will include relevant supporting papers for the agenda items to be discussed.

Notice

7.4 A notice or agenda may be given by mail (electronic or otherwise) or in person at the usual place of business or residence of the CCC Member or at any other address given to the CCC as a place for service of correspondence.

Attendance

7.5 Only the following people are entitled to attend a CCC meeting:

(a) a CCC Member or a CCC Member's alternate; and

(b) any person invited to attend the meeting by the CCC Chair including any Administrator, a person providing evidence, information or advice in relation to a matter being dealt with by the CCC, a representative of a Code Member being investigated by the CCC, a representative of a Code Member or a person providing administrative assistance to the CCC.

7.6 In the case of a representative of a Code Member attending pursuant to paragraph (b) above, that representative must leave the meeting during the time period in which a matter concerning another Code Member is being considered.

Quorum

7.7 A quorum for a meeting of the CCC will be three CCC Members or at least two CCC Members and no more than one alternate at any meeting, unless the Board has approved otherwise. The quorum must be maintained throughout the meeting provided that a quorum will not cease to exist because a CCC Member must leave the meeting due to reasons of conflict.

Chair

7.8 The CCC Chair will preside over each meeting of the CCC. In the absence of the CCC Chair, the CCC Members in attendance will elect one of their number to chair that meeting.

Proceedings

7.9 Proceedings and meetings of the CCC will be held in such manner, and utilising such technology, as the CCC from time to time agrees and which are not inconsistent with these Terms of Reference. In the absence of any resolution to the contrary and other than as provided in these Terms of Reference, the CCC may meet in any manner permitted for meetings of the Board and in accordance with provisions applicable to meetings of the Board.

Voting

7.10 Each CCC Member (or their alternate if they attend a meeting at which their appointer is not present) has one vote and every question arising at a CCC meeting shall be determined on a show of hands or as otherwise determined by the CCC Chair, by a simple majority. The CCC Chair does not have a casting vote.

Minutes

7.11 Minutes of proceedings and resolutions of the CCC meeting will be taken and kept by the Administrator and distributed to all CCC Members for approval. Minutes, and the contents of minutes, must be kept confidential and all reasonable steps must be taken by all relevant people to preserve that confidentiality.

Material Personal Interest

7.12 If a CCC Member has a material personal interest or potential conflict in relation to a matter that is being considered at a CCC meeting, he/she must not:

(a) be present while the matter is being considered at the meeting; or
(b) vote on the matter,

unless:

(c) the CCC Member has notified the other CCC Members of their material personal interest or potential conflict;
(d) the other CCC Members are satisfied that the material personal interest or potential conflict is not such as to disqualify the CCC Member from voting on the matter;
(e) the nature of the material personal interest or potential conflict and the circumstances in which it was disclosed are recorded in the minutes of that meeting; and
(f) the details of that minute, relevant determination and relevant reports on the matter are made available for inspection on request by any Code Member affected.

7.13 For the avoidance of doubt:

(a) a material personal interest or potential conflict for the purposes of clause 7.12 does not arise solely by reason of a CCC Member's previous employment with or holding of office with a Code Member, or by reason of the CCC Member being a borrower or other customer of a Code Member or a related body corporate; and
(b) a CCC Member who is conflicted may still receive papers relevant to the meeting at which the matter is considered, but the information relating to the conflicted matter must be redacted.

7.14 The requirements in clause 7.12 have effect in addition to, and not in derogation of, any general law about conflicts of interest or conflicts of duties.

8. Monitoring Code Compliance

8.1 The CCC may for the purposes of monitoring and enforcing compliance with the Code:

(a) without limiting the generality of any other provision of these Terms of Reference, including clause 2.3, make reasonable requests for a Code Member to provide the CCC with access to information, documents and systems which the CCC (acting reasonably) considers necessary or appropriate to carry out its functions and responsibilities;
(b) seek independent professional legal, accounting, industry or other advice;
(c) conduct enquiries on its own initiative and conduct audits of any Code Member's compliance with the Code provided that any such audit is limited to (as applicable) a specific issue which the CCC (acting reasonably) believes is of sufficient concern to warrant an audit; and
(d) request each Code Member to lodge an annual attestation on its compliance with the Code in such form as the CCC may require from time to time but to include a certification by a director of the Code Member that it complies with the requirements of being a Code Member, including that its pro forma documents comply with relevant laws and are enforceable, including those dealing with unfair contracts.

8.2 The CCC may for the purpose of monitoring and assessing compliance with the Code, collect data from Code Members including (but not limited to):

(a) on a quarterly basis, information relating to any Alleged Breach, noting that in accordance with a Code Member's obligations under the By Laws a Code Member must inform the CCC as soon as practical but no later than 10 Business Days after it becomes aware of any matter that is of such significance that it may reasonably bring disrepute to AFIA and/or to the Group (unless the Code Member is unable to do so due to legal or regulatory requirements); and

(b) on a quarterly basis:

(i) confirmation that, on its website and other digital platforms, it has a reference to the Code and provides a link to the AFIA website; and

(ii) examples of how it has been publicising the Code — for example, through press, media orconference commentary, third party and staff education collateral.

8.3 The data must be:

(a) presented in a consistent form that is approved by the CCC, following consultation with Code Members; and

(b) used to conduct an assessment that allows Code Members to assess their Code compliance, relative to other Code Members.

8.4 The CCC, for each period in which it collects data, will include the outcome of items (a) and (b) as part of its report as required under clause 11.1(a) and (b) and clause 11.2(a) and (b).

9. Investigating Code Compliance and Alleged Breaches

Alleged Breach

9.1 The CCC may only commence an investigation of Code compliance:

(a) in response to:

(i) an allegation from any person that a Code Member has, or may have, breached the Code;

(ii) a referral or report from an external stakeholder that a Code Member has, or may have, breached the Code;

(iii) an allegation raised by an existing Code Member that another Code Member may be guilty of conduct which is unbecoming to a member of AFIA and/or the Group or prejudicial to the interests of AFIA and / or the Group or otherwise has failed to comply with its obligations under the Constitution or the Code; or

(b) as an outcome of the CCC's monitoring process, if the CCC has reason to suspect that a Code Member may have breached the Code (including in circumstances where a Code Member has self-identified a breach or potential breach)

(each an **Alleged Breach**).

Consideration of Alleged Breaches

9.2 The CCC may consider any Alleged Breach except that, subject to clause 9.3, the CCC must not consider an Alleged Breach in any of the following circumstances:

(a) where the person complaining of the Alleged Breach (or another person acting on their behalf) is also seeking compensation or other redress for loss or detriment allegedly suffered by them arising from substantially the same facts.

In these situations, the Alleged Breach must be referred to the Code Member's internal dispute resolution and/or external dispute resolution schemes;

(b) where an Alleged Breach is also the subject of a dispute under an external dispute resolution or conciliation scheme or the subject of an investigation by any regulatory body. In these situations, the CCC must await the final determination or findings under the relevant dispute resolution or conciliation scheme or of the relevant regulatory body before commencing any investigation.

Where this paragraph (b) applies, on completion of the proceedings under the relevant dispute resolution or conciliation scheme, the CCC can consider whether to undertake its own investigation of the Alleged Breach and, if it does so, whether or not it will have regard to any determination made in relation to such dispute resolution or conciliation scheme;

(c) to the extent that the Alleged Breach relates to a Code Member's commercial judgment including decisions aboutprovision of their products and services. However, the CCC may consider an Alleged Breach where it is alleged that, in exercising its commercial judgment:

(i) the Code Member has failed to fulfil its obligations under the Code; or

(ii) a Code Member has acted in a manner which is likely to bring disrepute to AFIA, another Code Member or to the Group;

(d) if the CCC has identified a more appropriate forum to deal with the Alleged Breach;

(e) if the CCC considers that the Alleged Breach is frivolous or vexatious;

(f) if the Alleged Breach is based on substantially the same events and facts as a previous Alleged Breach by the complainant to the CCC, unless there is material new information;

(g) if the events to which the Alleged Breach relate occurred:

(i) before the Code Member to which the Alleged Breach relates became a Code Member;

(ii) in relation to an entity which was not a Code Member at the time of the events to which the Alleged Breach relates and was subsequently acquired by a Code Member; or

(iii) if the complainant was aware of the events to which the Alleged Breach relates or would have become aware of them if they had used reasonable diligence, more than one year before the complainant first notified the CCC in writing. This restriction can be waived at the discretion of the CCC if the CCC is unanimously of the opinion that the delay was reasonable in the circumstances and the Code Member will not be unreasonably prejudiced by the delay.

Investigations at Recommendation of Board

9.3 The CCC may investigate an Alleged Breach on the Board's recommendation if the Board determines that it is in the interests of the industry or AFIA.

Responding to Alleged Breaches

9.4 Where the CCC investigates an Alleged Breach, it will:

(a) acknowledge the reporting of the Alleged Breach in writing within 10 Business Days of receiving the report;

(b) assess the Alleged Breach taking into account the outcomes of any internal and external dispute resolution processes and the outcome being sought;

(c) plan the investigation, if the Alleged Breach cannot be resolved within 10 Business Days, by defining what is to be investigated and considering whether further information is required;

(d) when required, as ask an appropriate representative of the Code Member to attend an interview;

(e) provide the person who made the allegation with protections as outlined by *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* if applicable;

(f) if appropriate, require a Code Member to investigate an Alleged Breach and report back to the CCC (including, where appropriate, with the assistance of external expertise);

(g) investigate the Alleged Breach by reaching a fair and independent view on the issues and provide an appropriate remedy, taking into consideration any undertaking by the Code Member as to action it will take, or has taken in relation to the Alleged Breach; and

(h) respond with a clear decision within 60 Business Days (unless further investigation is needed, in which event the CCC will provide reasonable notice and details, including likely time to finalise).

9.5 The CCC will also consider whether an Alleged Breach is indicative of an underlying systemic problem by having regard to the number and frequency of similar reported breaches by the Code Member. Where appropriate, a determination of the CCC may include recommendations for corrective measures to be implemented by the Code Member including potential remediation or rectification in respect of the Alleged Breach.

9.6 Details of the determination:

(a) may be provided all Code Members to assist them in understanding their Code compliance obligations; and

(b) will, if relevant, be provided to the person who made the allegation unless the CCC considers it inappropriate in the circumstances to do so.

Corrective measures

9.7 When deciding whether a Code Member has breached the Code, the CCC will act independently of any other person or body of AFIA and do what is fair and reasonable having regard to:

(a) any principles relevant to the decision-making process;

(b) all applicable Code provisions; and

(c) any Protocol as to the Code requirements.

For the avoidance of doubt, the CCC is not bound by any of its previous findings or recommendations.

9.8 If it has been determined by the CCC that a Code Member has breached the Code, the CCC and the relevant Code Member may agree on any corrective measures and the relevant timeframes for implementing them.

Sanctions

9.9 The CCC may, at its sole discretion, impose a Sanction on a Code Member in regard to a breach of the Code or the By-Laws:

(a) if that is considered to be an appropriate corrective measure by the CCC;
(b) if the Code Member has failed to implement and comply with agreed corrective measures (or to do so within the agreed timeframe); or
(c) where (in the opinion of the CCC) the Code Member fails to reach agreement with the CCC within a reasonable timeframe in regard to appropriate corrective measures or other remediation to be taken by the Code Member.

9.10 When imposing a Sanction, the CCC may impose or action one or more of the following Sanctions in accordance with the relevant Protocol and Code:

(a) require the Code Member to undertake a commercially reasonable rectification process or other related step within a specified timeframe, taking into account any rectification related to any breach agreed with or imposed on the Code Member by any regulatory body;
(b) require a Code Member to undertake a compliance review of their remedial actions or remedial action plan;
(c) issue a formal warning to the Code Member;
(d) require the Code Member to undertake an additional Code compliance audit at the expense of the Code Member;
(e) publicise notice of the non-compliance on the AFIA website and in AFIA's annual review and six-monthly report;
(f) publicise notice of the non-compliance in a public media release;
(g) report the Alleged Breach to the Relevant Regulatory Bodies (as defined in Schedule 1 of this document, as amended from time to time);
(h) recommend that the Board suspend or revoke the Code Member's certification as a Code Member;
(i) require the Code Member to cease portraying itself as being a Code Member and to cease using any logo or other symbol which is permitted for use by only relevant Code Members and / or to remove from its website and from its documents and literature any reference or indication that it is a Code Member; and
(j) recommend to the Board that the Code Member's Membership of AFIA and / or of the Group be reviewed, suspended or terminated.

9.11 The power of the CCC to impose a Sanction on a Code Member cannot be delegated.

9.12 Before imposing a Sanction, the CCC will:

(a) notify the Code Member in writing including a brief description of the Alleged Breach and the CCC's findings with an outline of the factors the CCC considered in making its decision; and
(b) provide an opportunity for the Code Member to respond with any comment within 15 Business Days of receipt of the notice provided under paragraph (a) above.

9.13 The CCC will consider any response by the Code Member before making a final decision on whether to impose a Sanction. The CCC will notify the Code Member in writing of its decision and its reasons.

9.14 AFIA may (on its own behalf or on behalf of the CCC) take such action as the Board considers appropriate, including an application for injunctive relief, to enforce any

Sanction, and may recover the costs of any such action from the party against which it takes such action. This clause may be used in the pleadings in any such proceedings.

9.15 The CCC is under no obligation to impose a Sanction unless there has been a Significant Breach in which case the CCC must impose the Sanctions 9.10(c), (e) and (g) as well as any other Sanction that the CCC considers important to ensure customer confidence in the Code.

9.16 For all other Alleged Breaches, the decision to impose a Sanction is at the sole discretion of the CCC and is subject to the terms of the Code and any other Protocol. However, the CCC recognises the importance of Sanctions in ensuring that customers have confidence in the Code.

9.17 When Sanctions are imposed, the CCC will publish details of the Sanctions in AFIA's annual review and six-monthly report. Details to be published are:

(a) the name of the entity sanctioned, if the CCC considers this necessary and appropriate having regard to the severity of the Alleged Breach;
(b) the type of Sanction imposed and amount, if relevant; and
(c) the statement of reasons for the CCC's findings of non-compliance.

Appeals

9.18 An appeal from a decision by the CCC will be considered and investigated by a person nominated by the Resolution Institute (or its successor body) on the request of the Chair of the CCC.

10. Confidential Information

10.1 For the purposes of these Terms of Reference, Confidential Information means all technical, commercial and other confidential information and materials of a Code Member, consumer or small business and includes any information or material that discloses or relates to:

(a) a Code Member's compliance or non-compliance with the Code;
(b) an actual or Alleged Breach of the Code by a Code Member;
(c) commercial, financial or legal affairs of a Code Member including pricing policies, costing information, supplier lists and customer lists;
(d) legal advice;
(e) a matter to which an obligation of confidence applies under applicable privacy laws; and
(f) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose attention that information or material otherwise comes, would consider confidential.

10.2 Subject to clause 10.3:

(a) CCC Members must keep confidential all Confidential Information which comes to their attention in regard to CCC issues; and
(b) a person who attends a CCC meeting or a meeting with a CCC Member must not disclose or use for a purpose other than contemplated by the Code or these Terms of Reference, any Confidential Information supplied to him/her in connection with the conduct of the business of the CCC.

10.3 A CCC Member may disclose Confidential Information:

(a) in the AFIA annual and six-monthly reports as contemplated by these Terms of Reference;

(b) to another CCC Member or member of the Board or to any person to whom disclosure is reasonably required for the purpose of the CCC or the Board exercising its functions or powers;

(c) to any person to whom disclosure of the Confidential Information is required by law;

(d) to a person retained to provide advice to the CCC or the Board provided that the CCC explains this clause to that person and the person agrees to be bound by this clause 10;

(e) for the purpose of imposing a Sanction on a Code Member in accordance with the Code; or

(f) with the prior written consent of the Code Member, subject to applicable privacy laws.

11. Reporting by CCC

11.1 The CCC will prepare a report for the period from the commencement of its operation to 30 June that year, and annually for the period commencing on 1 July and ending on 30 June each year thereafter, for inclusion in AFIA's annual review. Each such annual report should include an outline of the activities of the CCC in the relevant period, including:

(a) information collected under clauses 8.2, 8.3 and 8.4, of any reported or investigated Alleged Breaches and any corrective measures agreed with the relevant Code Member(s);

(b) a consolidated analysis of Code compliance by Code Members for the period of the report as collected under clauses 8.2, 8.3 and 8.4;

(c) information as to any Sanctions imposed by the CCC;

(d) information about any serious and systemic issues of breaches of the Code which have come to the CCC's attention;

(e) information as to the number of CCC meetings held and the attendance of CCC Members at these meetings;

(f) any recommendations on Code improvements and industry issues relevant to the operation of any Code arising out of its experiences of Code compliance in the relevant period, including where non-compliance with the Code indicates an industry-wide issue or weakness of the Code;

(g) a statement that the CCC has complied with its Terms of Reference and any binding obligations on it under the Code or other relevant Protocol and, if there has been any non-compliance, the report must identify that non-compliance and the reasons for it, including any action that may have been instituted by the CCC to ensure that such non-compliance does not occur in the future; and

(h) any other matters that the CCC considers should be included that are consistent with the functions of the CCC.

11.2 In addition to clause 11.1, the CCC will prepare a 6-monthly report for each 6 month period from the commencement of its operation. Each such report should include an outline of the activities of the CCC in the relevant period, including:

(a) information as to any reported or investigated Alleged Breaches and any corrective measures agreed with the relevant Code Member(s);

(b) a consolidated analysis of Code compliance by Code Members for the period of the report;

(c) information as to any Sanctions imposed by the CCC;

(d) any recommendations on Code improvements and industry issues relevant to the operation of the Code arising out of its experiences of Code compliance in the relevant period, including where non-compliance with the Code indicates an industry-wide issue or weakness of the Code; and

(e) any other matters that the CCC considers should be included that are consistent with the functions of the CCC.

11.3 Before determining what data it collects and publishes, the CCC should take into account any industry data already published by any regulator or AFIA to avoid duplication.

11.4 The AFIA annual reviews and six-monthly reports will be available on the CCC's and AFIA's websites.

12. Promotion of the Code

12.1 AFIA and the CCC will facilitate promotion of the Code with relevant external stakeholders. This may include Relevant Regulatory Bodies and / or AFIA and / or the CCC, speaking at conferences, seminars and workshops.

13. Development of Policies and Procedures

Development of Policies and Procedures

13.1 The CCC may develop:

(a) policies and guidelines on the administration and implementation of the Code and its requirements;

(b) compliance reporting and other forms; and

(c) operating procedures related to the activities of the CCC, that are consistent with these Terms of Reference, the Code and any other relevant Protocol.

Recommendations of Changes to Codes

13.2 The CCC may recommend changes to the Code for consideration by the Board.

Recommendations of Changes to Terms of Reference

13.3 The CCC may recommend changes to these Terms of Reference for consideration by the Board.

Consultation

13.4 The CCC will consult with relevant industry and consumer groups and Code Members in developing policies, guidelines, reporting forms and operating procedures relating to the Code and recommended changes to the Code. The CCC may also consult with other organisations and individuals with an interest in the Code, as the CCC considers appropriate.

14. Reporting to AFIA Board

14.1 The CCC must regularly report to the Board on matters relevant to the CCC's role and responsibilities and which the CCC Chair reasonably believes should be notified to the Board.

15. Self-assessment

15.1 The CCC will periodically (but no less frequently than every three years) assess its own effectiveness with a view to ensuring that its performance accords with best practice guidelines.

15.2 When the CCC assesses its effectiveness, it may seek and consider input from:

(a) relevant industry and consumer groups;
(b) Code Members; and
(c) relevant professional advisors as provided for in clause 2.5.

16. Definitions and Interpretation

Definitions

16.1 Unless the context indicates or requires otherwise:

AFIA means Australian Finance Industry Association Limited ACN 000 493 907 (including any division) and includes any Subsidiary it might have from time to time.

Alleged Breach has the meaning given to that term in clause 9.1.

Bankruptcy Act means the *Bankruptcy Act 1966 (Cth)*.

Board means the board of Directors of AFIA from time to time, acting as a board.

Business Day means a day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia.

By-Laws means the AFIA Finance Industry Code of Practice By-Laws as amended from time to time.

Chief Executive Officer means the chief executive officer of AFIA from time to time.

Code means the AFIA Finance Industry Code of Practice applicable to members which has been approved by the Board.

Code Administrator has the meaning given to that term in clause 6.2.

Code Member has the meaning given to that term in the Code.

Confidential Information has the meaning given to that term in clause 10.1.

Constitution means the constitution of AFIA, as amended from time to time.

Group means the group of AFIA members who are Code Members.

Member means a member of AFIA.

Protocol has the same meaning as in the Constitution and in this context refers to the Rules, By-Laws or other document dealing with the structure or administration of the Group, a committee or other subdivision of AFIA.

Rules means a document approved by the Board and setting out details for the operation and administration of the Group or a committee.

Sanction means a sanction or requirement authorised to be imposed by the Code or other relevant Protocol.

Terms used in these Terms of Reference which are not defined in it, but which are defined in the Constitution will have the same meaning as there defined.

Terms used in these Terms of Reference which are not defined in the Constitution but are defined in the *Corporations Act 2001* (*Cth*), will have the same meaning as there defined.

Interpretation

16.2 Unless the context indicates or requires otherwise, in these Terms of Reference:

(a) headings are for convenience only and do not affect the interpretation of these Terms of Reference;

(b) reference to the singular includes the plural and vice versa;

(c) reference to a person includes a corporation and vice versa;

(d) reference to a body, a committee or a position of, or in relation to, AFIA, or to an official document relating to AFIA, means that body, committee, position or document from time to time;

(e) any term which is defined in the descriptions of the parties, the recitals or elsewhere in these Terms of Reference will have that defined meaning;

(f) where any word or phrase is defined in these Terms of Reference, any other grammatical form of that word or phrase will have a corresponding meaning;

(g) reference to an annexure or an appendix, or to a part, article or other subdivision, is to an annexure or appendix, or to a part, article or other subdivision, of these Terms of Reference;

(h) reference to a statute, ordinance, code or other law includes any amendment to it, any replacement of it and any statute, ordinance, code or other law intended to operate in conjunction with it and, in each instance, includes every regulation, rule and other instrument;

(i) reference to "month" is to a calendar month;

(j) all monetary amounts are in Australian dollars;

(k) "including" and similar expressions are not words of limitation; and

(l) reference to a “function” includes a reference to a power, authority and duty.

SCHEDULE 1

1. RELEVANT LEGISLATION

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Australian Securities and Investments Commission Act 2001

Competition and Consumer Act 2010

Corporations Act 2001

Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

Privacy Act 1988

Spam Act 2003

2. RELEVANT REGULATORY BODIES

Australian Competition and Consumer Commission (ACCC)

Australian Financial Complaints Authority (AFCA)

Australian Prudential Regulatory Authority (APRA)

Australian Securities and Investments Commission (ASIC)

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Australian
Finance
Industry
Association

Australian Finance Industry Association
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