

ANNEXURE D

CODE COMPLIANCE MONITORING COMMITTEE ASSOCIATION CONSTITUTION EXTRACTS

While the Bank states it requires the CCMC to monitor compliance under this Code the CCMCA constitution was kept from customers, which limited the investigative powers of the Code Compliance Monitoring Committee.

It notes:

- 1.1 The CCMCA is made up of the CEO's of 16 code subscribing banks.
- 2.1 **Forum** - means any court, tribunal, arbitrator mediator, independent conciliation body, dispute resolution body, complaint resolution scheme or statutory ombudsman in any jurisdiction.
- 3.1 Objectives of the CCMCA are to establish and to make provision for this operation of the CCMC.
- 3.3 A CCMCA member is each code subscriber, which subscribes to this constitution by giving an instrument to that affect signed by its Chief Executive Officer (CEO.)
- 3.7 **Functions** - The CCMCA shall meet only for the purpose of considering proposed amendments to the constitution, amending the constitution and for any other purpose that arises from the constitution.
- 3.11 Each CCMCA member shall be represented at its meeting by the CEO of the association member or a senior executive of the member appointed by instrument in writing signed by the member CEO.
- 3.13 The CCMCA shall elect a chair and a deputy chair at a meeting of the CCMCA.
- 3.15 Each question arising at a meeting of the CCMCA shall be determined by a three quarter majority vote.
- 4.1 There shall be CCMC established pursuant to this clause and in accordance with this constitution with the powers and obligations set out in the constitution.
- 4.2 The functions of the CCMC are to monitor compliance under the code by CCMCA members, to investigate and to make a determination on any allegation from any person that a CCMCA member has breached the code and to monitor any aspect of the code that is referred to the CCMC.
- 4.3 The CCMCA and each member shall not intervene in the CCMC 's activities or denigrate CCMC.
- 5.1 The CCMC must be comprised of three persons appointed in accordance with clauses 5.2-5.4 below.

- 5.2 CCMC appointed by the CCMCA members with relevant experience at a senior level in retail banking in Australia and appointed by resolution of the CCMCA.
- 5.3 CCMC member appointed by consumer and small business representatives with relevant experience and knowledge as a consumer's and small business representative and appointed by a written instrument signed by each of the consumer directors of the FOS.
- 5.4 CCMC member who shall hold office as CCMC Chair must be a person with experience within industry, public administration or government service and appointed jointly by resolution of the directors of the FOS and resolution of the CCMCA.
- 7.1 (a) The CCMC Chair shall do such things as are expressed to be within their responsibilities under the constitution and shall exercise or perform such powers as the CCMC may from time to time assign to or vest in them.
- (b) The CCMC Chairs duties shall include administering and managing the office and staff of the CCMC and doing all such things as shall be necessary to achieve the mission of the CCMC.
- 8.1 The CMCC must consider any complaint alleging that a CCMC member has breached the code except that the CCMC must not consider a complaint.
- (a) to the extent that the complaint relates to a CCMCA member's commercial judgement about lending or security. However, the CCMC may consider a complaint alleging a breach of the code arising from maladministration by the CCMCA member in arriving at a commercial judgement.
- (b) if the CMC is or becomes aware that a complaint is being or will be heard in another forum and the forum may make a final determination as to whether a breach of the code, or [the complaint] was heard by another forum and the forum has determined whether the breach of the code has occurred.
- (c) if the CCMC thinks there is a more appropriate forum to deal with the complaint.
- (d) which the CCMC has referred to the CCMCA member concerned unless the member has responded to the complaint or 45 days has lapsed, whichever is the earlier.
- (e) if the CCMC considers the complaint is frivolous or vexatious or if the complaint is based on the same events and facts as a previous by the complainant to the CCMC unless there is new information.
- (h) the complainant was aware of the events to which the complaint relates or would have become aware of them if they had used reasonable diligence and more than one year before the complainant notified the CCMC in writing.

- 8.2 The CCMC must, within a reasonable period of time if receiving a complaint, consider the complaint in accordance with the CCMCA constitution and any operating procedures determined by the CCMCA.
- 10.1 When considering a complaint or conducting an inquiry the CCMC must;
- (a) to the extent relevant to complaint or inquiry and subject to provisions of the code the criteria of law, other applicable industry codes or guidelines, good industry practice and fairness in circumstances ensure as far as practicable that the CCMCA member's business is disrupted unduly and CCMCA's customers are not inconvenienced and act reasonably in all circumstances.

NB: A full copy of our bank's 2004 Code Compliance Monitoring Committee Association's Constitution can be made available to you on request, however this may be subject to agreement by the Australian Bankers Association.

ANNEXURE E

US Department of Justice, Bank of America Case, Thursday, 21 August 2014

The Bank of America case has parallels to our situation. The circumstances are not totally different and the Bank's misleading its customers is similar.

Chris and I would like to place on record the following extracts of the News Release published on Thursday, 21 August 2014 by the US Department of Justice, Office of Public Affairs, stating:

"On Thursday, August 21, 2014, US Attorney General Eric Holder announced that the Department of Justice has reached a \$16.65 billion settlement ... against Bank of America and its subsidiaries ("the bank") ... [It] does not release individuals from civil charges, nor does absolve the bank from potential criminal prosecution.

This historic resolution ... goes far beyond 'the cost of doing business ... Attorney General Holder This is appropriate given the size and scope of the wrongdoing at issue. Associate Attorney General West added ... the significance of this settlement lies not just in size; this agreement is notable because it achieves real accountability for the [public] and helps to rectify the harm caused by Bank of America's conduct"

An independent monitor will be appointed to determine whether Bank ... is satisfying its obligations. [The bank] regularly told investors the loans it was securitizing were made to borrowers who were likely and able to repay their debts. [It] made these representations even though it knew, based on the due diligence it had performed on samples of the loans, that a significant number of loans had material underwriting and compliance defects.

U.S. Attorney Paul J. Fishman for the District of New Jersey [said] "The failure to disclose known risks undermines investor confidence in our financial institutions.

Today's settlement attests to the fact that fraud pervaded every level of the RMBS industry, including purportedly prime securities, which formed the basis of our filed complaint," said U.S. Attorney Anne M. Tompkins for the Western District of North Carolina. "Even reputable institutions like [this bank] caved to the pernicious forces of greed and cut corners, putting profits ahead of their customers. Today's settlement makes clear that my office will not sit idly while fraud occurs in our backyard."

In addition to the matters relating to ... toxic mortgages, today's settlement also resolves claims arising out of misrepresentations made to government entities concerning the origination of residential mortgages.

The investigation into these practices, as well as ... private whistle-blower lawsuits filed under seal pursuant to the False Claims Act, are resolved in connection with this settlement. As part of the settlement, the bank has agreed to pay \$1 billion to resolve their liability under the False Claims Act.

The bank made admissions concerning their conduct, including they were aware ... that loans they had made to borrowers were defective ... representations and warranties ... about the quality of the loans were inaccurate.