

20 June 2019

Confidential Communication

Australian Financial Complaints Authority (AFCA)
GPO Box 3
Melbourne, VIC 3001
Attention Mike D'Argaville

By email: submissions@afca.org.au

Perpetual Corporate Trust Limited
ABN 99 000 341 533

Angel Place,
Level 18, 123 Pitt Street
Sydney NSW 2000
Australia
GPO Box 4172
SYDNEY NSW 2001
Australia

Phone 02 9229 9000
Fax 02 8256 1419
www.perpetual.com.au

Dear Sir,

Response to AFCA Consultation Paper

We refer to draft AFCA Rules Change (Rule A14.5) consultation paper, dated 31 May 2019.

Background

Perpetual Corporate Trust Limited and other entities in the Perpetual Limited Group (collectively **Perpetual**) act as trustee for various securitisation programs which amounts to billions of dollars of securitised loans held on trust. In securitisation programs the underlying assets (loans and mortgages) may be regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP**) where the assets being securitised concern retail borrowers and the trustee is engaging in a specified credit activity.¹

The securitised and regulated assets may be originated in Perpetual's name (a legal title program) or assigned in equity to Perpetual (an equitable title program). In a legal title program, Perpetual is the named lender of record on the loans and related mortgages. As trustee, Perpetual is not involved in the origination or day-to-day servicing activities. The lending and servicing activities are carried out by the appointed originator and servicer (most commonly the sponsor/non-bank lender), as set out in a servicing agreement.²

The NCCP (and AFCA's processes – and, formerly, the CIO's and FOS' processes) recognises that securitisation trustees and 'special purpose funding entities' and 'securitisation entities'³ under the NCCP ought to be exempt from the licensing requirements and obligations arising under the national consumer credit regime. This is because the securitisation trustee is not responsible for any commercial aspect of the loan, including matters such as its enforcement, and dealing with complaints and disputes. It is a fundamental characteristic of all securitisation programs that such matters rest solely with the servicer or trust manager pursuant to a servicing agreement.⁴

EDR Complaint Process

¹ Subregulations 23B(3) and 23C(3) of the *National Consumer Credit Protection Regulation 2010* (Cth) (**NCCPR**)

² One of the pre-conditions of a 'special purpose funding entity' and a 'securitisation entity' is that it must be a party to a **servicing agreement** as per subregulations 23B(1)(b) and 23C(1)(b) of the NCCPR.

³ See subregulations 23B and 23C of the NCCPR

⁴ See 2 above

For example, when a complaint is lodged with AFCA (or formerly, the CIO or FOS), Perpetual as the respondent has, according to AFCA's own processes, a certain brief period in which to respond to AFCA if it believes it is not the correct respondent to the complaint. Perpetual maintains a corporate AFCA membership for this purpose, and as part of being a securitisation trustee. Typically, Perpetual will notify the complainant and AFCA that the proper party to respond is the servicer (or trust manager). Upon which AFCA (and formerly, the CIO) will promptly transfer case management of the dispute to the servicer – and remove Perpetual from further involvement in the dispute. The servicer responds to, and manages the whole of the dispute (and may offer a settlement sum), as it is authorised and expected to do so pursuant to the servicing agreement.

We note that special purpose funding entities and securitisation entities must, by operation of the *National Consumer Credit Protection Regulation 2010* (Cth) (**NCCPR**), give reasonable assistance to AFCA in resolving a complaint; identify, locate and provide documents that AFCA reasonably requires; and give effect to any determinations made by AFCA.⁵

Consultation Question

Whilst we acknowledge the stated intention of the proposed rule change, the applicability to Perpetual as a securitisation trustee is unclear. Assuming we act in good faith – including ensuring complaints are accepted and managed by the relevant loan servicer (and, we acknowledge Perpetual is obliged to do so by operation of subregulations 23B(5) and 23C(5) of the NCCPR) – we submit that it is disproportionate, inaccurate and unfair for Perpetual as a securitisation trustee to be named as a 'financial firm' under the proposed rule A14.5, when the complaint relates to the appointed servicer. Doing so would also create unintended reputational consequences for Perpetual.

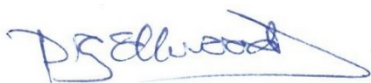
We appreciate that AFCA's proposed regime may provide a healthy incentive for applicable financial firms to resolve disputes efficiently and fairly under a 'naming and shaming' approach. However, as set out in this letter, Perpetual is a professional corporate trustee and a third party service provider to the securitisation and finance industry. If it were named as a 'financial firm' under AFCA's proposed rule change, it would result in Perpetual being named in a disproportionate number of complaints which do not genuinely reflect the actual financial services that the Perpetual Group provides. Further and significantly, the number of citations that Perpetual would incur would not be an accurate or fair representation to the community of Perpetual's involvement in the retail finance industry – nor would it accurately and fairly reflect the robust standard that Perpetual provides pursuant to its own internal and external dispute resolution policy that we apply to complaints we receive from our direct customers. The consequences of these are serious – and, we submit, entail a significant and unnecessary reputational consequence for Perpetual (and other special purpose funding entities and securitisation entities). We do not believe that the intention of the rule is to capture the role that Perpetual plays in this industry, but rather is directed at those parties who are responsible and should be held to account for the wrongful conduct.

If AFCA felt minded to implement its proposed rule change, it would be our obvious preference that AFCA excluded special purpose funding entities and securitisation entities (as the legislative regime and AFCA's processes already provide).

We would appreciate AFCA's clarification of the applicability under the rule where a trustee of securitised loans is the lender.

If you have any queries, please do not hesitate to contact [REDACTED]

Your faithfully



⁵ Subregulations 23B(5) and 23C(5) of the NCCPR